



Suppressing Protest: Human Rights Violations in the U.S. Response to Occupy Wall Street

The Global Justice Clinic (NYU School of Law) and the Walter Leitner International Human Rights Clinic at the
Leitner Center for International Law and Justice (Fordham Law School)

as part of the

Protest and Assembly Rights Project



About the Protest and Assembly Rights Project

In January 2012, international human rights and U.S. civil liberties experts at seven law school clinics across the United States formed the *Protest and Assembly Rights Project*. This joint project investigated the United States response to Occupy Wall Street in light of the government's international legal obligations. The participating law clinics are:

Project Directors and Coordinators:

The Global Justice Clinic (GJC) at NYU School of Law provides high quality, professional human rights lawyering services to individual clients and non-governmental and inter-governmental organizations, partnering with groups based in the United States and abroad, or undertaking its own projects. Serving as legal advisers, counsel, co-counsel, or advocacy partners, Clinic students work side-by-side with human rights activists from around the world.

The Walter Leitner International Human Rights Clinic at the Leitner Center for International Law and Justice at Fordham Law School aims to train a new generation of human rights lawyers and to inspire results-oriented, practical human rights work throughout the world. The Clinic works in partnership with non-governmental organizations and foreign law schools on international human rights projects ranging from legal and policy analysis, fact-finding and report writing, human rights training and capacity-building, and public interest litigation. The views expressed herein are not reflective of the official position of Fordham Law School or Fordham University.

The International Human Rights Clinic at Harvard Law School is a center for active engagement in human rights within a context of critical reflection. The Clinic works on a range of international human rights and humanitarian law projects on a variety of topics and in countries throughout the world, including the United States. Under the close supervision of clinical faculty, and in collaboration with other organizations and advocates working towards social justice, Clinic students advance the interests of clients and affected communities through a range of approaches and strategies, including documentation, litigation, research, and community education.

The International Human Rights and Conflict Resolution Clinic at Stanford Law School provides direct representation to victims and works with communities that have suffered or face potential rights abuse. The Clinic seeks both to train advocates and advance the cause of human rights and global justice and to promote sustainable conflict resolution. In its first year, the Clinic has addressed labor rights, transitional justice, gang violence and violations of the laws of war in countries as diverse and distant as Brazil, Cambodia, El Salvador, Turkey and the United States.

Participating Clinics:

The Civil Rights Clinic at the Charlotte School of Law gives students an opportunity to engage in real-world advocacy while at the same time advancing local civil rights causes. The Clinic educates students in various ways to perform many of the different traditional litigation skills (fact investigation, pleading, motions practice, depositions, trial work, etc.), and also teaches how to be creative within ethical bounds in order to embrace different models of advocacy to advance the particular cause or client's interest for which they are working.

The Community Justice section of Loyola Law Clinic-New Orleans teaches law students substantive, procedural and practical advocacy skills in order to assist community members with post-disaster housing and government accountability issues. Particular emphasis is placed on social justice issues and community lawyering. Under faculty supervision, clinic students work as the lead lawyers and partner with co-counsel on individual and impact litigation civil and human rights cases.

The Constitutional Litigation Clinic at Rutgers School of Law-Newark has worked on cutting-edge constitutional reform since its founding in 1970. Through the clinic, students not only learn the law, they make the law. Students are actively involved in all aspects of the clinic's work, including deciding which cases to take, interviewing clients, developing the facts, crafting legal theories, drafting legal briefs and preparing for oral arguments.

Report Acknowledgements

This report is the first in a series of reports by the *Protest and Assembly Rights Project* to address the United States response to Occupy Wall Street. This report focuses on the response in New York City. Subsequent reports will address the responses in Boston, Charlotte, Oakland, and San Francisco.

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TABLE OF CONTENTS

Acknowledgements	i
Table of Contents	iv
Executive Summary	vi
Introduction	1
Methodology	3
PART I: BACKGROUND, CONTEXT, LAW	6
Chapter One: Occupy Wall Street in the Context of Contemporary and Historic Social Protest	6
1. Occupy Wall Street: Evolution and Characteristics	6
2. Occupy in the Context of Recent International Protests	14
3. Public Protest in the United States	19
Chapter Two: Policing: Background, Context, Guidelines	24
1. Major U.S. Policing Issues: Policing of Racial and Religious Minorities and the Homeless	24
2. Protest Policing Strategies: An Overview	26
3. U.S. Policing Guidelines and Use of Force Rules	31
Chapter Three: International Law and Protest Rights	45
1. Introduction: The Right to Engage in Peaceful Protest and Political Assembly	45
2. Protest, Assembly, and Expression Rights are Foundational to Democracy	47
3. Scope and Content of Protest Rights	52
4. Policing Protests: Use of Force, Policies and Training, Surveillance	64
5. State Obligation to Investigate, Prosecute, and Remedy Violations	68
PART II: HUMAN RIGHTS CONCERNS IN THE RESPONSE TO OCCUPY WALL STREET	71
Chapter One: Aggressive and Excessive Police Use of Force	72
1. Bodily Force: Pushing, Shoving, Dragging, Hitting, Punching, Kicking	73
2. Weapon Use: Batons, Pepper Spray, Barricades, Scooters, Horses	75
3. Restraints: Flex Cuff Injuries	78
4. Delays and Denial of Medical Care	80
5. Unnecessary Police Force Violates and Suppresses Protest Rights	81
Chapter Two: Over-Policing and Poor Communication	82
Chapter Three: Obstruction of Press Freedoms and Documentation at Protests	84

1. Abuse of Press Freedoms During the Zuccotti Park Eviction	85
2. Arrests of Journalists	87
3. Physical Abuse of Journalists	88
4. Other Obstructions of Press Freedoms	89
5. State Interference with Press Freedoms Violates International Law	90
Chapter Four: Obstruction of Independent Monitoring by Legal Observers	90
Chapter Five: Police Surveillance	93
1. Surveillance	93
2. Interrogations and Intimidation	96
3. Surveillance and Intimidation of Protesters Chills Protected Expression	98
Chapter Six: Zuccotti Park—Eviction, Park Closures, and Arbitrary Rules	98
1. The Eviction	98
2. Shifting and Arbitrary Park Rules	106
3. Subsequent Park Closures	109
Chapter Seven: Public Space Closure—Strategies of Containment, Exclusion, and Dispersal	110
1. Kettling (Corralling)	110
2. Arbitrary Park Closures	113
3. Sidewalk Closures and “Blocking Pedestrian Traffic” Arrests	115
4. Arrests of Protesters Sleeping or Lying on Sidewalks	118
5. Protest Permits and “Blocking Vehicular Traffic” Arrests	119
6. Arrests, Conditional Dismissal of Charges, Stay-Away Orders	120
Chapter Eight: Other Arbitrary “Rule” Enforcement	121
Chapter Nine: Accountability and Transparency Failures	124
1. Internal Discipline and Reporting	125
2. External Civilian Complaint and Oversight Mechanisms	126
3. Public Transparency	127
Findings and Recommendations	130
Appendix I: Table of Police Use of Force Allegations	
Appendix II: Letters from NYPD	
Appendix III: Index of Arrests of Journalists and Others Documenting Occupy Wall Street	

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Executive Summary

In September 2011, waves of protests against mounting socioeconomic injustice broke out across the United States, capturing the attention of the country. The Occupy Wall Street movement, inspired by similar protests around the globe, used the occupation of public space and mass demonstrations to call attention to a wide array of shared concerns. The movement also used public assemblies to debate concerns and promote direct democratic participation. Within weeks of their emergence, the protests dramatically expanded and deepened U.S. political discourse around the widening gap between rich and poor, bank bailouts and impunity for financial crimes, and the role of money in politics.

The response of U.S. authorities to the protests also received significant attention. Images of police using pepper spray on seated students, the arrests of thousands of peaceful protesters across the country, midnight raids on encampments, baton-swinging officers, marches accompanied by phalanxes of riot police, and officers obstructing and arresting journalists were beamed around the world.

This is the first in a series of reports examining the responses of U.S. authorities to the Occupy protests. Through an eight-month-long study of the response in New York City, together with comparative data collected from cities across the United States, this report highlights major policy concerns and serious violations of the rights of protesters. Further detailed studies will be published in the coming months on the response of authorities in Boston, Charlotte, Oakland, and San Francisco.

Government responses to Occupy Wall Street in the United States have varied significantly, both within and across cities. Indeed, there have been examples of good practice, including through welcoming assemblies, using modern democratic policing styles that promote negotiation to facilitate protests, and enforcing strict controls on any use of police force.

But across the United States, abusive and unlawful protest regulation and policing practices have been and continue to be alarmingly evident. This report follows a review of thousands of news reports and hundreds of hours of video, extensive firsthand observation, and detailed witness interviews. In New York City, some of the worst practices documented include:

- Aggressive, unnecessary and excessive police force against peaceful protesters, bystanders, legal observers, and journalists
- Obstruction of press freedoms and independent legal monitoring
- Pervasive surveillance of peaceful political activity
- Violent late-night raids on peaceful encampments
- Unjustified closure of public space, dispersal of peaceful assemblies, and kettling (corralling and trapping) of protesters
- Arbitrary and selective rule enforcement and baseless arrests
- Failures to ensure transparency about applicable government policies
- Failures to ensure accountability for those allegedly responsible for abuses

These practices violate assembly and expression rights and breach the U.S. government's international legal obligations to respect those rights. In New York City, protest policing concerns are extensive and exist against a backdrop of disproportionate and well-documented abusive policing practices in poor and minority communities outside of the protest context.

Governments—including U.S. federal, state, and local authorities—are obliged by

international law to uphold the rights of individuals to peacefully assemble and to seek to reform their governments. The freedoms of assembly and expression are essential pillars for democratic participation, the exchange and development of grievances and reforms, and securing positive social change. This report provides extensive analysis of the U.S. government's international legal obligations with respect to protests. The abusive practices documented in this report violate international law and suppress and chill protest rights, not only by undermining individual liberty, but also by causing both minor and serious physical injuries, inhibiting collective debate and the capacity to effectively press for social and economic change, and making people afraid to attend otherwise peaceful assemblies.

For protesters who previously had little interaction with police, these abusive practices have radically altered worldviews about the role of police in protecting citizens. For others who had long experienced official discrimination and abuse, especially those from minority and economically disadvantaged communities, protest experiences have simply reinforced existing negative perceptions.

Protests have long been an important feature of American politics and have been essential to securing fundamental rights and freedoms. Yet the response of authorities has undermined foundational US democratic values, and often seemed to only reinforce Occupy's core grievances. While federal prosecutions of economic crimes, such as mass fraud, are at a 20 year low, in just 10 months, public authorities across the United States have arrested more than 7,000 and physically injured Occupy protestors seeking social and economic reforms.

While after just two months city authorities dismantled many of the high-profile around-the-clock Occupy encampments that initially defined the movement, regular marches, demonstrations, and assemblies continue in many places, including New York City. The government response to Occupy Wall Street in New York City is emblematic of its failure to adequately protect protest rights more broadly. Reform is needed to ensure that U.S. authorities respect and facilitate—rather than suppress—the ability to peacefully protest.

In U.S. cities with significant abuse allegations and no major reviews of police practice, including New York City, independent official reviews are urgently needed to assess past practice, promote accountability for abuse, and reform authorities' responses to bring them into line with binding international legal obligations and modern democratic policing best practice. In New York, the mayor should urgently announce a major review of the City's response to Occupy Wall Street, and legislators should establish an independent Inspector-General to oversee policing practices. In addition, the police should implement a new protest policing policy that prioritizes respect for civil liberties and human rights. Where city or state authorities themselves fail to take the necessary steps of review and reform, federal authorities should exercise their powers to institute investigations and oversight.

The Occupy protests took place amid an extraordinary period of global social movement mobilization – Egypt's Tahrir Square, Spain's *indignados*, Greek anti-austerity protests, Chile's students, Montreal's *casseroles*, and many others have inspired and been inspired by one another. The US government has closely monitored protests in other countries, and has frequently publicly criticized other governments for violating their international legal obligations to uphold protest rights. As the Occupy protests entered the world stage, governments around the world also paid close attention to the U.S. authorities' responses. Some countries, when pressed about their own mass arrests and beatings of protesters, have justified their actions by pointing to the highly visible and aggressive policing practices in the United States. Some other countries' responses to protests have been far—and sometimes, incomparably—worse than U.S. authorities' responses. Yet the restriction of protest in U.S. cities exposes the double standard inherent in frequent U.S. government critiques of other governments for repressing their peoples' protest rights.

The freedoms to peacefully assemble, to engage in political expression, to march and demonstrate, and to seek socioeconomic reform are not diplomatic sound bites. They are fundamental rights, vital in all democracies, and U.S. authorities are legally bound to respect and uphold them.

These rights must be secured at home.

Introduction

This report contains two main parts. **Part One** provides background, contextual, and legal analysis relevant to Occupy Wall Street. **Part Two** documents the human rights concerns in the government treatment of Occupy Wall Street in New York City. The report concludes with major findings and recommendations.

Part One, “Background, Context, Law” contains three chapters:

Chapter One provides contemporary and historical context for Occupy Wall Street. *Section One* outlines the emergence of Occupy Wall Street, and describes its characteristics and development. *Section Two* sketches the international context for Occupy Wall Street, describing protests and government responses in other countries. *Section Three* discusses public protest in United States history.

Chapter Two provides background and context for policing generally. *Section One* discusses policing concerns in the United States, describing concerns related to race and the criminal justice system, surveillance of Muslim communities, and the police treatment of the homeless and poor. *Section Two* outlines the common styles, strategies and tactics used specifically in protest policing, addressing the policing models of escalated force, negotiated management, command and control, and strategic incapacitation. *Section Three* explains available U.S. policing guidelines and use of force rules, especially as relevant to protest policing.

Chapter Three contains a detailed analysis of international law and protest rights. It sets out the international legal framework for the rights to engage in peaceful protest and political assembly. It explains the basis for the protections in international law and why the rights are foundational to democracy, outlines specific protected protest and assembly activities, and describes the limited permissible restrictions a government may impose on the exercise of these rights.

Part Two, “Human Rights Concerns in the Response to Occupy Wall Street” contains nine chapters, and documents concerns and human rights violations in the government response to Occupy Wall Street in New York City. This Part documents reports of repeated excessive or unnecessary police use of force, massive and continuous over-policing and poor communication, obstruction of press freedoms and independent legal monitoring, constant police surveillance, unjustified restrictions on the ability of individuals to peacefully assemble in public spaces, arbitrary rule enforcement, and accountability and transparency failures. *Appendix I* to the report is a *Table of Alleged Incidents of Physical Force*, listing **130 incidents** in New York City which warrant investigation by authorities.

This report concludes that U.S. authorities have engaged in a pattern of treatment of Occupy Wall Street that violates international law by unnecessarily and unjustifiably restricting the rights to assembly and expression.

To address these concerns and to restore respect for fundamental rights, this report recommends a number of concrete measures. Key among these is that New York authorities create and implement a new crowd control policy that prioritizes respect for civil liberties and human rights. New York authorities must also ensure accountability for past abuses, conduct an independent review of past practice, and create an independent Inspector-General to oversee the police.

If New York officials fail to announce a good faith intention to undertake these measures, the United States Department of Justice should exercise its authority to investigate allegations of official misconduct. United Nations Special Rapporteurs with mandates addressing expression, assembly, and human rights defenders should also investigate US practice.

Methodology

This report addresses the treatment of Occupy Wall Street by U.S. local, state, and federal government entities from September 2011 through July 2012. The report focuses on whether and to what extent the United States has met or failed to meet its international legal obligations to respect the rights to free assembly and expression.

The findings of this report are based on eight months of data collection, fact finding, and analysis. The Research Team carried out all documentation and reporting in accordance with the core human rights fact-finding principles of accuracy, confidentiality, sensitivity, impartiality, independence, integrity, and professionalism.¹

The report focuses on the response in New York City. Subsequent reports will address Boston; Charlotte; and the San Francisco Bay Area (Oakland and San Francisco). Researchers also gathered additional comparative information from numerous other U.S. cities, including Atlanta, Chicago, Dallas, Denver, Los Angeles, New Orleans, Philadelphia, Pittsburgh, Portland, Salt Lake City, and Washington, D.C. International comparative data was collected on several other countries, including Bahrain, Canada, Egypt, Indonesia, Nigeria, Russia, South Africa, Spain, and the United Kingdom.

Interviews carried out for this study were conducted or supervised by professors, attorneys, and researchers experienced in investigating allegations of human rights abuses. The Research Team prepared a uniform interview guide and applied it to interviews through a semi-structured interview format. Interviews with witnesses testifying to specific incidents used cognitive interviewing techniques.² Interviewers sought information about many issues, including: patterns and examples of police conduct; details of any alleged official misconduct; investigation into misconduct; accountability mechanisms for misconduct; legal frameworks; the nature of arrests; protester behavior; press freedom; permit schemes; encampments; and individual motives for participating in protests. The Research Team also specifically sought information about examples of best practices for the facilitation of protest by police and city officials, as well as positive experiences with police and city officials.

Those interviewed for this study included: individuals who participated in or witnessed Occupy protests; lawyers representing protesters in criminal and civil cases; members of civil society organizations (including the National Lawyers Guild); journalists covering the Occupy protests; and legal and policing experts and scholars. Researchers sought potential interviewees through a range of methods, including direct requests to individuals likely to have relevant information (e.g., journalists, civil society representatives, protesters identified in the press, officials), through attorneys representing protesters, and through public announcements of this research project via open Occupy assemblies and meetings, listservs, and social media.

¹ See, e.g., RAOUL WALLENBERG INST. OF HUM. RTS. AND HUMANITARIAN LAW, GUIDELINES ON INTERNATIONAL HUMAN RIGHTS FACT-FINDING VISITS AND REPORTS (THE LUND-LONDON GUIDELINES) (Lund University 2009); Code of Conduct for Special Procedures Mandate-holders of the Human Rights Council, U.N.H.R.C. Res. 5/2 (Jun. 17, 2007); INGO ACCOUNTABILITY CHARTER, INTERNATIONAL NON GOVERNMENTAL ORGANISATIONS ACCOUNTABILITY CHARTER (2005); U.N. Office of the High Comm'r for Hum. Rts., *Training Manual on Human Rights Monitoring*, U.N. Doc. HR/P/PT/7 (2001); Navanethem Pillay, U.N. High Comm'r for Hum. Rts., *Human Rights Investigations and their Methodology* (February 2010).

² See, e.g., as first developed in RONALD P. FISHER & R. EDWARD GEISELMAN, *MEMORY-ENHANCING TECHNIQUES FOR INVESTIGATIVE INTERVIEWING: THE COGNITIVE INTERVIEW* (Charles C Thomas 1992).

Interviews were requested with a wide range of New York City officials, including Mayor Bloomberg, members of the New York City Police Department (NYPD), the Department of Parks and Recreation, the Public Advocate, and the District Attorney's Office. With the exception of the NYPD, which replied with written refusals to meet, the Research Team received no response from any of these offices.³ The Research Team also received a communication from, and subsequently met with, the Administrative Law Division of the New York City Law Department.

Information on pending investigations was also requested from the Civilian Complaint Review Board, which provided some information to the Research Team. The Research Team also requested a meeting with a representative of Brookfield Properties; no response was received.

Members of the Research Team carried out visits to Occupy encampments or demonstrations. Research included extensive firsthand monitoring of Occupy-related assemblies, actions, and protest marches. Two members of the Research Team also frequently acted as National Lawyers Guild–New York City Chapter independent Legal Observers. One member of the Research Team, while documenting arrests as a Legal Observer, was arrested and charged; her case is pending. A second member of the Research Team, also while monitoring protests as a Legal Observer, was temporarily detained twice, and police officers stated she was under arrest. On each occasion, however, officers released her shortly thereafter without charges.

Research for this report also drew on analysis of a wide array of other sources, including: photographic evidence and hundreds of hours of video footage of Occupy protests; thousands of media reports; social media; government-published sources, including press releases, official speeches and statements, records of floor debates, court documents (party and amicus briefs, judicial decisions, and transcripts), laws, regulations, ordinances, policy manuals, patrol guides, policing guidelines, policing orders and policies, and police charging documents; documents obtained through freedom of information laws; documents published by Occupy General Assemblies, Occupy Working Groups, and individual Occupy protesters; academic texts (addressing legal issues, social movements, policing, and protests); civil society and nongovernmental organization reports; policing best practice guides and training manuals; and international laws, documents, guides, and reports.

The Research Team conducted a detailed rights-based risk assessment in the preparation of this study. The assessment focused on mitigating any privacy, retraumatization, security, or legal risks related to conducting interviews.⁴

Researchers applied detailed informed consent guidelines to all interviews. Interviewers allowed interviewees to choose whether or how they would want to be identified in this report. The report does not include names and other identifying information of interviewed

³ Meetings were sought with Police Commissioner Raymond Kelly, Chief Philip Banks (NYPD Community Affairs), and Commanders of the 1st, 5th, 6th, and 9th precincts. Multiple requests to meet with NYPD representatives were made. The Research Team received two written responses from the NYPD, both stating that it refused to meet. Copies of these letters are attached to this report. The Research Team also requested meetings with the Patrolman's Benevolent Association and the Sergeant's Benevolent Association; no response was received.

⁴ In the preparation of this risk assessment, regard was had to a range of sources, including: MARIE CARAJ & ENRIQUE EGUREN FERNÁNDEZ, PROTECTION INTERNATIONAL, NEW PROTECTION MANUAL FOR HUMAN RIGHTS DEFENDERS (3d ed. 2009); INT'L ORG. FOR MIGRATION, DATA PROTECTION MANUAL (2010); U.N. Office of the High Comm'r for Hum. Rts., *Training Manual on Human Rights Monitoring*, *supra* note 1.

individuals in this report when so requested by the individual concerned or when the Research Team determined that doing so would put the individual at risk.⁵ The Research Team obtained external legal advice on interviewing individuals involved in litigation. Individuals involved in ongoing cases were not interviewed without their attorney's consent. Because of the very high arrest rates of protesters in New York, this significantly restricted the scope of potential interviewees, but was deemed necessary to minimize risk. Interviewees who requested legal advice or representation were provided referrals to attorneys, and those who wished to make a complaint about police misconduct were provided information about relevant complaint mechanisms. The Research Team also offered referrals to local counseling services for any individuals who reported having witnessed or experienced violence, or who reported common symptoms of post-traumatic stress disorder to interviewers.⁶ Information was collected and stored to maximize privacy and security protections.⁷

The report documents a large number of allegations of unnecessary and excessive force by police officers. The Research Team chose not to publish in this report the names of individual officers against whom allegations of abuse were made, to minimize prejudicing any future disciplinary or criminal sanctions against those officers.

⁵ See, e.g., RAOUL WALLENBERG INST. OF HUM. RTS. AND HUMANITARIAN LAW, *supra* note 1, at Principles 38-39, 42; U.N.H.R.C. Res. 5/2, *supra* note 1, at Article 8(b).

⁶ The risks of experiencing symptoms associated with post-traumatic stress disorder from witnessing violence are well-documented, and the risks of secondary or vicarious trauma from conducting interviews with victims are also well-documented: Lisa McCann & Laurie Anne Pearlman, *Vicarious Traumatization: A Framework for Understanding the Psychological Effects of Working with Victims*, 3(1) J. OF TRAUMATIC STRESS 131 (1990). For this reason, students involved in interviewing were educated about the risks and signs of vicarious trauma, and resilience capacities were promoted.

⁷ In the preparation of internal guidelines for information collection and storage, external advice was sought from legal and information technology and data security experts.

PART I: BACKGROUND, CONTEXT, LAW

Occupy Wall Street began its occupation in downtown Manhattan on September 17, 2011. However, the movement drew inspiration and influence from protests taking place around the world, including in the Middle East and North Africa, Spain, Greece, the United Kingdom, Chile, and Israel, as well as prior protests in the United States.¹ Further, within the United States, the Occupy movement emerged in the context of a long tradition of public demonstrations against socioeconomic inequality and other injustices. The response of law enforcement to the Occupy protests also exists within a broader context of general and protest-specific policing practices.

Part I of this report provides context for the Occupy movement, and for the response of authorities. It also provides an international legal framework through which to analyze the restrictions on protest rights evident in the government's response. Chapter One explores the evolution of Occupy Wall Street, alongside a recent upsurge of mass movements garnering widespread attention, and within the history of U.S. social movements. Chapter Two provides context for the law enforcement response, considering policing concerns outside of the protest context—particularly issues related to policing of racial and religious minorities and the poor—and specifically within the protest context. Chapter Three analyzes the international legal framework applicable to protests, including detail on protest activities protected by international law, and the legal constraints on the use of police force.

Chapter One: Occupy Wall Street in the Context of Contemporary and Historic Social Protest

1. Occupy Wall Street: Evolution and Characteristics

The beginnings of the Occupy Movement. In a year of high-profile mass movements around the globe that challenged the status quo, protesters in the United States began occupying public spaces to challenge economic inequality and corporate influences in politics. Protesters in Wisconsin, for example, established a long-term presence in the State Capitol building in February 2011, and subsequently erected a tent city dubbed “Walkerville” in response to Governor Scott Walker’s efforts to remove collective bargaining rights for most of the state’s public employees.² Meanwhile, protesters in New York City began a sleep-in in front of City Hall on June 14, 2011, to protest Mayor Michael Bloomberg’s proposed budget, which called for cuts to day care centers, libraries, the fire department, and education, including the layoff of 6,100 teachers.³ “Bloombergville” protesters camped outside City Hall

¹ For more on the connections between Occupy and other social movements, see Michael Hardt and Antonio Negri, *Declaration: Hardt & Negri*, CRITICAL LEGAL THINKING (June 14, 2012), <http://criticallegalthinking.com/2012/06/14/declaration-hardt-negri/>.

² Peter Grier, *How long can Wisconsin protesters occupy the State Capitol?*, CHRISTIAN SCI. MONITOR (Feb. 28, 2011), <http://www.csmonitor.com/USA/Politics/The-Vote/2011/0228/How-long-can-Wisconsin-protesters-occupy-the-State-Capitol>. Protesters in Madison, Wisconsin deliberately designed Walkerville, in June 2011, to evoke comparisons with “Hooverilles,” the shanty towns constructed during the Great Depression, which were named to draw attention to President Herbert Hoover’s perceived failure to address widespread social and economic suffering. Greg Botelho, *Wisconsin activists create Walkerville to taunt governor, tout change*, CNN (June 5, 2011), http://articles.cnn.com/2011-06-05/politics/wisconsin.walkerville_1_protests-wisconsin-state-capitol-thousands?s=PM:POLITICS.

³ David W. Chen, *In ‘Bloombergville,’ Budget Protesters Sleep In*, N.Y. TIMES (June 15, 2011, 2:47 PM), <http://cityroom.blogs.nytimes.com/2011/06/15/in-bloombergville-budget-protesters-sleep-in/>; *Welcome to Bloombergville: New York Activists Fight Budget Cuts By Camping in Front of City Hall*, DEMOCRACY NOW! (June 24, 2011), http://www.democracynow.org/blog/2011/6/24/welcome_to_bloombergville_new_york_activists_fight_budget_cuts_by_

for several weeks and later held a “People’s General Assembly” near Wall Street to discuss the budget cuts.⁴

In mid-July, Adbusters, a nonprofit organization that publishes a magazine focusing on social, cultural, and activist issues, proposed the idea of “occupying” Wall Street on September 17, 2011. The call to “flood into lower Manhattan, set up tents, kitchens, peaceful barricades and occupy Wall Street” galvanized some activists.⁵ A similar call went out to “turn the Arab Spring into the American Autumn” by gathering in Washington, D.C. on October 6.⁶ Planning sessions were held over the summer of 2011 to prepare for the September demonstration in Manhattan. In attendance were some of the activists involved in New Yorkers Against Budget Cuts, the group behind Bloombergville, as well as people who had participated in anti-globalization protests and the 2004 Republican National Convention protests in New York.⁷ Some individuals traveled to Spain to talk to members of the *indignados* movement, and some who had been involved in recent mass protests in Spain and elsewhere were involved in these early meetings.⁸

When protesters arrived on Wall Street on September 17, they found that the New York Police Department (NYPD) had closed off much of Wall Street with metal barricades.⁹ Protesters ended up gathering in nearby Zuccotti Park, a one-square-block plaza in the financial district in lower Manhattan.

Zuccotti Park is a privately owned public space (or POPS) in lower Manhattan owned by the company Brookfield Properties. According to a special permit that authorized the creation of the park, in return for various desired and valuable zoning concessions, the custodian of the park is required to permit the public to access the park 24 hours a day.¹⁰

camping_in_front_of_city_hall; *NYC Union Workers Camp At ‘Bloombergville’ To Protest Budget Cuts*, CBS NEW YORK (June 15, 2011 9:20 AM), <http://newyork.cbslocal.com/2011/06/15/nyc-union-workers-camp-at-bloombergville-to-protest-budget-cuts/>.

⁴ *Let the Bankers Miss Their Payments—Not the People*, BLOOMBERGVILLE NOW! (July 30, 2011), <http://bloombergvillenow.org/2011/07/30/let-the-bankers-miss-their-payments-not-the-people/>.

⁵ *#OccupyWallStreet: A Shift in Revolutionary Tactics*, ADBUSTERS (July 13, 2011), <http://www.adbusters.org/blogs/adbusters-blog/occupywallstreet.html>; see also *About Adbusters*, ADBUSTERS, <http://www.adbusters.org/about/adbusters> (last visited July 21, 2012); William Yardley, *The Branding of the Occupy Movement*, N.Y. TIMES (Nov. 27, 2011), <http://www.nytimes.com/2011/11/28/business/media/the-branding-of-the-occupy-movement.html?pagewanted=all>. September 17 was chosen in part because it marks the date when the Constitutional Convention signed the U.S. Constitution in 1787. *Constitution Day and Citizenship Day*, LAW LIBRARY OF CONGRESS, <http://loc.gov/law/help/commemorative-observations/constitution-day.php>; Andrew Fleming, *Adbusters Sparks Wall Street Protest: Vancouver-Based Activists Behind Street Actions in the U.S.*, VANCOUVER COURIER (Sept. 27, 2011), <http://www.vancourier.com/Adbusters+sparks+Wall+Street+protest/5466332/story.html>.

⁶ Kevin Zeese et al., *History is Knocking*, OCCUPY WASHINGTON D.C. (June 4, 2011), <http://october2011.org/history-is-knocking>.

⁷ Mattathias Schwartz, *Pre-Occupied*, NEW YORKER (Nov. 28, 2011), http://www.newyorker.com/reporting/2011/11/28/111128fa_fact_schwartz; Cinzia Arruzza, *Occupy America*, J. FOR OCCUPIED STUDIES (Feb. 2012); Matt Sledge, *Reawakening The Radical Imagination: The Origins of Occupy Wall Street*, HUFFINGTON POST (Nov. 10, 2011), http://www.huffingtonpost.com/2011/11/10/occupy-wall-street-origins_n_1083977.html.

⁸ Amy Goodman, *General Strike in Spain: Report from Madrid on Growing Anti-Austerity Protests*, DEMOCRACY NOW! (Mar. 30, 2012), http://www.democracynow.org/blog/2012/3/30/general_strike_in_spain_report_from_madrid_on_growing_anti_austerity_protests (interview with Maria Carrion).

⁹ Colin Moynihan, *Wall Street Protest Begins, With Demonstrators Blocked*, N.Y. TIMES (Sept. 17, 2011, 4:26 PM), <http://cityroom.blogs.nytimes.com/2011/09/17/wall-street-protest-begins-with-demonstrators-blocked/?ref=occupywallstreet>.

¹⁰ Zuccotti Park is one of over 500 privately owned public spaces established in New York City over the past half-century. *Privately Owned Public Space*, N.Y.C. DEPT OF CITY PLANNING, <http://www.nyc.gov/html/dcp/html/priv/priv.shtml> (last visited July 21, 2012); Lisa Foderaro, *Privately Owned Park, Open to the Public, May Make Its Own Rules*, N.Y. TIMES (Oct. 13, 2011), <http://www.nytimes.com/2011/10/14/nyregion/zuccotti-park-is-privately-owned-but-open-to-the-public.html>. Zuccotti Park is the product of a special permit the City Planning Commission granted to U.S. Steel in 1968 authorizing a

On September 17, hundreds gathered in Zuccotti for a general assembly meeting.¹¹ After the meeting, several hundred people remained overnight in the park, and revived its former name: Liberty Plaza.¹² In the subsequent days, protesters developed an encampment that eventually included diverse communal facilities and services, including a kitchen; a medical station; a comfort station with clothing, sleeping supplies, and other amenities; a media center with internet access; a security team; a significant library; information desks; facilities for signage and art creation; programs for education and activist training; and speaker's corners.¹³ Protesters slept under blankets or sleeping bags in the open air, and did not begin to use tents until mid-October 2011. A medical tent appeared first, erected to ensure patient privacy.¹⁴ Shortly thereafter, tents for shelter were erected in response to a series of rainy and cold days.¹⁵

The encampment at Zuccotti Park grew in size and complexity until the City, acting at the request of the Brookfield Properties, forcibly evicted the protesters from the park in the middle of the night on November 15, allowing them to return only if they adhered to a series of rules that prohibited sleeping or lying down, the erection of tents, and bringing certain materials into the park.

Until the eviction, protesters had maintained an around-the-clock presence in Zuccotti Park with nightly General Assemblies to make decisions by consensus, speaker's corners, educational activities, and other events throughout the day. After the eviction, and through the date of publication of this report, protesters affiliated with Occupy Wall Street continued to use Zuccotti Park as a gathering place for movement building and protests.¹⁶

In the weeks that followed the start of the protests, Occupy participants held frequent demonstrations and marches in New York City. Many individuals traveled from elsewhere to join the protest. Protesters established Occupy offshoots in other parts of New York City as well, including Ocupemos Queens, Occupy the Bronx, and Occupy Sunset Park.¹⁷

Further, the encampment at Zuccotti Park served as one of the catalysts for protests and encampments in cities and towns across the country and beyond. To name only a few of the self-titled Occupy protests, including many encampments, Occupy protests formed in Washington, D.C., Oakland, California, and Anchorage, Alaska, among many others in the United States; and London, Buenos Aires, Hong Kong, and McMurdo Station in Antarctica,

waiver of rules that would permit a taller office tower in exchange for reserved public space. Brookfield Properties eventually took over both the building and the responsibility to oversee the park, and renamed it Zuccotti Park in 2006, after a Brookfield executive. City of New York Special Zoning Permit, CP-20222, No. 4, p. 215 (March 20, 1968); Nancy Scola, *Owners of the Park at the Center of the Occupy Wall Street Protests Are Losing Patience, but What Can They Do?*, CAPITAL NEW YORK (Oct. 4, 2011 12:51 PM), <http://www.capitalnewyork.com/article/politics/2011/10/3608746/owners-park-center-occupy-wall-street-protests-are-losing-patience/>.

¹¹ Schwartz, *supra* note 7.

¹² *Id.*

¹³ George Packer, *All the Angry People*, NEW YORKER (Dec. 5, 2011). For one detailed account of the early days at Zuccotti, see Astra Taylor & Mark Greif, *Scenes from an Occupation*, OCCUPY! AN OWS-INSPIRED GAZETTE, ISSUE #1 at 2.

¹⁴ In mid-October, police threatened to remove the medical tent but did not do so. Joe Coscarelli, *Jesse Jackson Literally Links Arms with Occupy Wall Street Protesters to Protect Medical Tent*, NY MAGAZINE (Oct. 18, 2011, 7:59 AM), http://nymag.com/daily/intel/2011/10/jesse_jackson_literally_links.html.

¹⁵ See, e.g., Andrew Grossman & Jessica Firger, *Against Rules, Tents Arise at Protest*, WALL ST. J. (Oct. 24, 2011), <http://online.wsj.com/article/SB10001424052970204777904576649691966085946.html>.

¹⁶ Most recently, for example, a large number of protesters gathered in Zuccotti on July 11, 2012, after a protest march from Philadelphia. Protesters also held a teach-in about corporate influence in politics on July 20, 2012. (Both protests witnessed by members of the Research Team.)

¹⁷ Ocupemos Queens: <http://www.queenslatino.com/ocupemos-queens/>; Occupy the Bronx: <http://occupythebronx.org/>; Occupy Sunset Park: <http://www.facebook.com/OccupySunsetPark>.

and many more sites outside of the United States.¹⁸ These protests communicated and sometimes organized with one another. For example, a month into the movement, on October 15, 2011, demonstrators participated in protests and rallies around the world in a “Global Day of Action,” protesting austerity measures and demanding better governance.¹⁹ In the United States, Occupy participants also organized National Bank Transfer Day, encouraging people to transfer their bank holdings from major banks to local credit unions on November 5, 2011. By that date, about 150,000 people had heeded the transfer call.²⁰

Structure and grievances of the movement. The protesters called for systemic reforms in the face of social and economic inequality, and challenged the corporate influence in the democratic process.²¹ In expressing the concerns that motivated the encampment and expanding protest, protesters referred to the U.S. Supreme Court’s decision in *Citizens United* and the broader issue of corporate influence in politics,²² the housing crisis and the foreclosures that have followed,²³ high health care costs,²⁴ student loans and the costs of private college tuitions,²⁵ the inability of college graduates and manual laborers to find jobs,²⁶ and U.S. involvement in two wars, financed through deficit spending.²⁷ Many of these

¹⁸ See *Occupation Directory*, OCCUPY DIRECTORY, <http://directory.occupy.net/occupations> (last visited July 23, 2012).

¹⁹ Derek Thompson, *Occupy the World: The ‘99 Percent’ Movement Goes Global*, ATLANTIC (Oct. 15, 2011, 9:40 PM), <http://www.theatlantic.com/business/archive/2011/10/occupy-the-world-the-99-percent-movement-goes-global/246757/>.

²⁰ Mark Derewicz, *Occupying Facebook*, UNC ENDEAVORS (Feb. 24, 2012), http://endeavors.unc.edu/occupy_facebook.

²¹ *Declaration of the Occupation of New York City*, N.Y.C. GEN. ASSEMBLY (Sept. 29, 2011), <http://www.nycga.net/resources/declaration/>; jcresearch, *Occupy Wall Street: Why Are You Here?*, YOUTUBE (Oct. 18, 2011), <http://www.youtube.com/watch?v=mnnVj2HYo8o>; Maud Dillingham, *Top 5 Targets of Occupy Wall Street*, CHRISTIAN SCI. MONITOR, <http://www.csmonitor.com/USA/2011/1024/Top-5-targets-of-Occupy-Wall-Street/Wall-Street-obviously> (last visited July 19, 2012) (“According to the AFL-CIO, in 2010, chief executives at some of the nation’s largest companies earned an average of \$11.4 million in total pay – 343 times more than a typical American worker. Occupy Wall Street protesters – many come from the union ranks – contrast those statistics the tens of thousands of layoffs, an unemployment rate hovering around 9 percent, and one in every 605 housing units nationally filing for foreclosure this September.”).

²² See Clare Malone, *What’s So “Super” about Super PACs?*, AMERICAN PROSPECT (Feb. 8, 2012), <http://prospect.org/article/whats-so-super-about-super-pacs>; Norman Ornstein, *Effect of Citizens United Felt Two Years Later*, ROLL CALL (Jan. 18, 2012), http://www.rollcall.com/issues/57_80/effect_citizens_united_felt_two_years_later-211556-1.html; R. SAM GARRETT, R42042, CONG. RESEARCH SERV., “SUPER PACS” IN FEDERAL ELECTIONS: OVERVIEW AND ISSUES FOR CONGRESS (2011), <http://www.fas.org/sgp/crs/misc/R42042.pdf>.

²³ See OCCUPY OUR HOMES, <http://occupyourhomes.org/>; Occupy Foreclosure, <http://occupyforeclosure.org/>; see also DARRYL E. GETTER ET AL., CONG. RESEARCH SERV., RL34232, THE PROCESS, DATA, AND COSTS OF MORTGAGE FORECLOSURE 11-12 (2008), <http://wassermanschultz.house.gov/RL34232.pdf>; JOINT CTR. FOR HOUS. STUDIES OF HARVARD UNIV., THE STATE OF THE NATION’S HOUSING 2011: EXECUTIVE SUMMARY (2011), <http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/son2011.pdf>.

²⁴ *News Release: U.S. Spends Far More for Health Care Than 12 Industrialized Nations, but Quality Varies*, COMMONWEALTH FUND (May 3, 2012), <http://www.commonwealthfund.org/News/News-Releases/2012/May/US-Spends-Far-More-for-Health-Care-Than-12-Industrialized-Nations-but-Quality-Varies.aspx>; U.S. CENSUS BUREAU, INCOME, POVERTY, AND HEALTH INSURANCE COVERAGE IN THE UNITED STATES: 2010 23-29 (2011), <http://www.census.gov/prod/2011pubs/p60-239.pdf>; Jason Sutherland, Ph.D., Elliott Fisher, M.D., M.P.H., & Jonathan Skinner, Ph.D., *Getting Past Denial—The High Cost of Health Care in the United States*, 361 NEW ENG. J. MED. 1227 (2009), <http://www.nejm.org/doi/full/10.1056/NEJMp0907172>.

²⁵ See OCCUPY STUDENT DEBT CAMPAIGN, <http://www.occupystudentdebtcampaign.org/>; OCCUPY STUDENT DEBT, <http://occupystudentdebt.com/>; Brianna Lee, *5 Things You Need to Know about Student Loan Debt*, PBS.ORG (Oct. 19, 2011), <http://www.pbs.org/wnet/need-to-know/five-things/student-loan-debt/12028/>; *The Project on Student Debt*, INSTITUTE FOR COLLEGE ACCESS AND SUCCESS, <http://projectonstudentdebt.org/> (last visited July 23, 2012).

²⁶ Sal Gentile, *Occupy Wall Street: Unemployment Is Not Going Away, and Neither Are We*, PBS.ORG (Mar. 21, 2012), <http://www.pbs.org/wnet/need-to-know/the-daily-need/occupy-wall-street-unemployment-is-not-going-away-and-neither-are-we/13406/>; see also *The Employment Situation—June 2012*, U.S. BUREAU OF LABOR STATISTICS (July 6, 2012), <http://www.bls.gov/news.release/empsit.nr0.htm>. Federal unemployment benefits will end for hundreds of thousands of people in 2012. See Shaila Dewan, *U.S. Winds Down Longer Benefits for the Unemployed*, N.Y. TIMES (May 28, 2012), http://www.nytimes.com/2012/05/29/business/economy/extended-federal-unemployment-benefits-begin-to-wind-down.html?_r=1&ref=unemploymentinsurance.

²⁷ MARC LABONTE & MINDY LEVIT, RL31176, CONG. RESEARCH SERV., FINANCING ISSUES AND ECONOMIC EFFECTS OF AMERICAN WARS 15-16 (2008), <http://www.fas.org/sgp/crs/natsec/RL31176.pdf> (“[T]he increase in military outlays

concerns are articulated in the *Declaration of the Occupation of New York City*, the first major New York General Assembly document agreed to by Occupy Wall Street.²⁸

The Occupy camps also, notably and deliberately, revived the idea of the commons—areas that were open to all to gather, converse, debate, educate and be educated, exchange ideas, meet new people, encounter different concerns, and draw links between distinct issues, organize, and make their voices heard. One of the individuals interviewed for this report described the significance of this shared space as part of her motivation for joining Occupy:²⁹

The thing that was special about Occupy was that people used their bodies to create a safe space to talk and to listen. Being able to go there, to Liberty, and be part of that safe space, was wonderful for me and a lot of people. I vote, I do phone calls for campaigns, I have money, but nothing changes. We occupied that space for democracy, for politics, for discussion.

Among the distinguishing characteristics of the Occupy movement were its insistence on maintaining a leaderless (or “leaderful”) structure, its use of participatory decision-making methods, and its use of social media. Drawing on past practice and direct democracy literature, Occupy participants worked through “horizontal” methods for holding discussions and making decisions during general assembly meetings.³⁰ Protesters began to use the “human microphone,” a strategy initially developed for spreading messages across large groups of people in areas where local ordinances prohibited the use of sound-amplifying equipment, but that also came to take on more symbolic meanings as a communication tactic that required individuals to listen carefully to one another, repeat each others’ words, and speak in unison.³¹

The organization of the encampment was a statement in itself. Decisions were made through direct participatory democracy, exemplified by general assembly meetings during which anyone could speak or use a series of hand gestures to indicate support, disapproval, or questions.³² People organized smaller working groups to take on the tasks of managing day-to-day life in the camp, such as cleaning up and recycling, and organizing a system to keep many people fed.³³ Other working groups focused on policy issues, looking at, among other things, tax policy, labor issues, campaign finance reform, and the regulations of the Securities and Exchange Commission.³⁴ As one participant explained, the protesters were “creating a vision of the sort of society [they] want to have in miniature.”³⁵

occurring during the early years of the war was not financed through higher tax revenues or lower non-military outlays. Therefore, the war [in Iraq] can be thought to be entirely deficit financed.”); AMY BELASCO, RL33110, CONG. RESEARCH SERV., THE COST OF IRAQ, AFGHANISTAN, AND OTHER GLOBAL WAR ON TERROR OPERATIONS SINCE 9/11 (2011), <http://www.fas.org/sgp/crs/natsec/RL33110.pdf>.

²⁸ *Declaration of the Occupation of New York City*, *supra* note 21.

²⁹ Interview (Parent and Protester) (RRR99) (2012).

³⁰ Schwartz, *supra* note 7.

³¹ The human microphone begins when someone says “mic check” to alert others. The speaker then begins the announcement, pausing after each small phrase so that the crowd can repeat the message to others further away from the speaker. Carrie Kahn, *Battle Cry: Occupy’s Messaging Tactics Catch On*, NPR.ORG (Dec. 6, 2011), <http://www.npr.org/2011/12/06/142999617/battle-cry-occupys-messaging-tactics-catch-on>. The human microphone has also been used as a protest technique to interrupt speakers, including Wisconsin Governor Scott Walker and President Obama. See *Scott Walker’s Chicago Speech Interrupted by ‘Covert’ Protesters*, HUFFINGTON POST (Nov. 2, 2011), http://www.huffingtonpost.com/2011/11/02/scott-walker-to-discuss-b_n_1072939.html; Brian Montopoli, *Mic Check: Occupy Protesters Interrupt Obama*, CBS NEWS (Nov. 22, 2011, 1:20 PM), http://www.cbsnews.com/8301-503544_162-57329652-503544/mic-check-occupy-protesters-interrupt-obama/.

³² Schwartz, *supra* note 7.

³³ Schwartz, *supra* note 7.

³⁴ Ezra Klein, *You’re Creating a Vision of the Sort of Society You Want to Have in Miniature*, WASH. POST (Oct. 3, 2011, 11:49 AM), http://www.washingtonpost.com/blogs/ezra-klein/post/youre-creating-a-vision-of-the-sort-of-society-you-want-to-have-in-miniature/2011/08/25/gIQAXVg7HL_blog.html; see also Move to Amend, <http://movetoamend.org/> (campaign against *Citizens United* decision); Occupy the SEC,

Occupy participants comprised a diverse group.³⁶ *Rolling Stone* described participants as:

...a demographic that didn't conform to media clichés: a gritty spiral jetty of anarchist punks and out-of-work construction workers and teachers who sleep in the park and rise early to get to school. Cooks and nannies and librarians, lots of librarians, and Teamsters and priests and immigrants, legal and otherwise, and culture jammers, eco-warriors, hackers, and men and women in Guy Fawkes masks, an army of stunt doubles from *V for Vendetta*, all joined by young veterans of the Arab Spring and the revolts in Greece and Spain...³⁷

Most protesters did not stay in the camps around the clock. People came when they could—on lunch breaks, after work, on weekends.³⁸ Far larger numbers turned out for specific marches or direct actions. Creating the physical space of the camps served to connect existing civil society groups focusing on a wide range of issues.³⁹

Occupy camps experienced some of the same security and crime concerns faced in other sizable groupings of people. In some cities, specific incidents raised—for both participants and city authorities—serious and legitimate concerns about how to ensure safety in an open public space, and whether appropriate measures could be implemented to ensure the safety of participants. For example, there have been reports of sexual assault and physical altercations.⁴⁰ In other cities, issues with crime were minimal or isolated, or were responded to by protesters with attempts at model community responses. Some encampments, for example, responded to security concerns by setting up “safer spaces” sleeping areas, holding open discussions about security, setting up participant security patrols, providing medical care and other community support, or seeking police assistance.

In the early weeks and months of the protests, the encampments were seen as the embodiment of Occupy. Yet the movement was from the beginning “a constellation of meetings, actions, affinities, and attempted interventions in politics and life-as-usual.”⁴¹ In addition to occupying parks or squares, protesters organized marches; produced news articles, pamphlets, and other educational materials; and participated in direct actions, including protest events held at banks and government buildings.⁴² Artists contributed to the movement with posters, music, and other forms of art.⁴³ Occupy participants also formed a

<http://www.occupythesec.org/>. The website of the New York City General Assembly lists some 90 working groups. *Groups Directory*, N.Y.C. GEN. ASSEMBLY, <http://www.nycga.net/groups/> (last visited July 23, 2012).

³⁵ Klein, *supra* note 34.

³⁶ Barbara and John Ehrenreich described a group of “people from comfortable backgrounds learning about street survival from the homeless, a distinguished professor of political science discussing horizontal versus vertical decision-making with a postal worker, military men in dress uniforms showing up to defend Occupiers from the police.” Barbara Ehrenreich & John Ehrenreich, *The Making of the 99%*, NATION (Dec. 14, 2011), <http://www.thenation.com/article/165167/making-99>; see also Interview with Tabatha Abu El-Haj (Professor of law) (2012) (describing the importance of encampments for forming deep relationships that enable political advocacy, and for creating the conditions that allow participants to consult and work out grievances).

³⁷ Jeff Sharlet, *Inside Occupy Wall Street*, ROLLING STONE (Nov. 10, 2011 8:00 AM), <http://www.rollingstone.com/politics/news/occupy-wall-street-welcome-to-the-occupation-20111110>.

³⁸ Lizzie Widdicombe, *Preoccupied*, NEW YORKER (Oct. 24, 2011), http://www.newyorker.com/talk/2011/10/24/111024ta_talk_widdicombe.

³⁹ Sam Graham-Felsen, *Hard Times at Occupy Boston*, NATION (Dec. 2, 2011), <http://www.thenation.com/article/164932/hard-times-occupy-boston>.

⁴⁰ *Id.*; Rebecca Solnit, *Why the Media Love the Violence of Protesters and Not of Banks*, NATION (Feb. 21, 2012), <http://www.thenation.com/article/166394/why-media-love-violence-protesters-and-not-banks>.

⁴¹ Natasha Lennard, *Time to retire “Occupy”?*, SALON.COM (June 5, 2012 12:23 PM), http://www.salon.com/2012/06/05/time_to_retire_occupy/.

⁴² See generally OCCUPY WALL STREET, <http://occupywallst.org/>; OCCUPIED WALL STREET J., <http://occupiedmedia.us/>.

⁴³ Among others, see the work of Molly Crabapple, <http://mollycrabapple.com/?s=occupy>, and Dan Archer (*in YES! MAGAZINE*), <http://www.yesmagazine.org/people-power/voices-from-occupy-oakland>. Protest actions were often

Free University, which organizes courses on a variety of topics, with a focus on how various subjects are connected and influenced by larger political and economic forces.⁴⁴

By December 2011, many of the original Occupy encampments in the United States had been forcibly evacuated by authorities. However, after the evictions, Occupy protests in many cities remained active, engaging in a broad range of direct actions and protest activities, some continuing until today. Some of the myriad protest activities linked to the Occupy movement subsequent to the string of evictions include:

- Regular and diverse actions to challenge home foreclosures;⁴⁵
- Various and continuing efforts to challenge the high price of higher education, including through the Occupy Student Debt Campaign and protest actions in solidarity with Canadians protesting both tuition hikes and harsh anti-protest laws;⁴⁶
- Protest gatherings in targeted cities to mark specific events, including a protest in Washington, D.C. on January 20, 2012, to mark the second anniversary of the Supreme Court's *Citizens United* decision,⁴⁷ and in Chicago in May 2012 in connection with the North Atlantic Treaty Organization (NATO) Summit;⁴⁸
- Days of national demonstrations, including one in February 2012 urging prison reform⁴⁹ and on May Day (May 1, 2012) to express solidarity with workers and immigrants;⁵⁰
- Solidarity actions with labor unions, including joint protests with the Teamsters in New York to fight a lockout of art handlers by Sotheby's, the high-end auction house, over contract disputes;⁵¹

creative, including the use of rubber stamps to imprint statistics on income inequality onto paper money. See OCCUPY GEORGE, <http://occupygeorge.com/>.

⁴⁴ See OCCUPY U., <http://university.nycga.net/>; Conor Tomás Reed, *On the City as University: Occupy and the Future of Public Education*, ADVOCATE (CUNY) (May 23, 2012), <http://www.gcadvocate.com/2012/05/city-university-occupy-future-public-education/>.

⁴⁵ See generally OCCUPY OUR HOMES, <http://occupyournames.org/stories/>; Han Shan, *Occupy Homes Wins Crucial Victories for Struggling Homeowners Against Big Banks*, ALTERNET (June 20, 2012), http://www.alternet.org/story/155964/occupy_homes_wins_crucial_victories_for_struggling_homeowners_against_big_banks/?page=entire. In one well-known example, Occupy Nashville took up the cause of Helen Bailey, a 78-year-old civil rights activist whose home was being foreclosed on by Chase Bank. Their campaign, which included a petition on Change.org that gathered over 100,000 signatures, gained national media attention, and resulted in an agreement between Chase and Ms. Bailey's attorney that will allow her to remain in her home. *Helen Bailey and JP Morgan Chase Reach Confidential Settlement that Allows Ms. Bailey to Remain in her Home*, OCCUPY NASHVILLE (Feb. 13, 2012), <http://occupynashville.org/2012/02/13/helen-bailey-and-jp-morgan-chase-reach-confidential-settlement-that-allows-ms-bailey-to-remain-in-her-home/>; *Helen Bailey Will Stay in Her Home*, CHANGE.ORG (Feb. 13, 2012), <http://www.change.org/petitions/chase-bank-dont-foreclose-on-helen-bailey>.

⁴⁶ *OccupyStudentDebtCampaign.org*, FACEBOOK, <http://www.facebook.com/OccupyStudentDebtCampaign> (last visited July 23, 2012); *A Statement From The Occupy Student Debt Campaign*, OCCUPYWALLST.ORG (June 25, 2012 9:00 AM), <http://occupywallst.org/article/statement-occupy-student-debt-campaign/>; Larry Abramson, *UC Students Propose Alternative To Tuition Increases*, NPR.ORG (Feb. 7, 2012), <http://www.npr.org/2012/02/07/146479925/uc-students-propose-alternative-to-tuition-increases>.

⁴⁷ Mike Sacks & Ariel Edwards-Levy, *Occupy the Courts Clashes with Supreme Court Police in Citizens United Protest*, HUFFINGTON POST (Jan. 20, 2012 6:19 PM), http://www.huffingtonpost.com/2012/01/20/occupy-the-courts-supreme-court-police-citizens-united_n_1219968.html.

⁴⁸ Allison Kilkenny, *Occupy Chicago Prepares for NATO*, NATION (May 14, 2012, 8:29 AM), <http://www.thenation.com/blog/167867/occupy-chicago-prepares-nato>; see generally OCCUPY CHICAGO, <http://occupychi.org/>.

⁴⁹ John Wildermuth, *700 Gather Outside San Quentin for Occupy Protest* (Feb. 20, 2012, 3:42 PM), <http://www.sfgate.com/cgi-bin/article.cgi?f=%2Fc%2Fa%2F2012%2F02%2F20%2FMNMU1NA590.DTL>.

⁵⁰ *May Day Directory: Occupy General Strike In Over 135 Cities*, OCCUPYWALLST.ORG (Apr. 21, 2012, 9:01 AM), <http://occupywallst.org/article/may-day/>; Annie Gowen, *Occupy Protests Draw Crowds in New York, D.C. and Across Globe; 30 Arrested in N.Y.*, WASH. POST (May 1, 2012), http://www.washingtonpost.com/local/occupy-may-day-protests-begin-around-the-globe-police-station-vandalised-in-san-francisco/2012/05/01/gIQAX1fztT_story.html.

⁵¹ Jenny Brown, *Ending Lockout, Teamsters Wrap Agreement with Sotheby's*, LABOR NOTES (June 1, 2012), <http://labornotes.org/2012/06/ending-lockout-teamsters-wrap-agreement-sothebys>; Michael London, *'Occupy Wall*

- The elaboration of particular policy proposals, such as the submission by Occupy the SEC⁵² of a 325-page letter to the Securities and Exchange Commission in defense of the Volcker Rule, a provision of proposed legislation for the reform of the financial sector that would prohibit consumer banks from engaging in certain kinds of risky trades, such as those that led to the subprime mortgage crisis;⁵³
- The establishment of continuing projects or the claiming of space, inspired by Occupy, such as the establishment in Oakland, California, of a “People’s School for Public Education,” with a sit-in and tent city outside an elementary school building closed due to budget cuts;⁵⁴ and
- Various other protests focused on the National Defense Authorization Act, education, primary elections, Political Action Committee meetings, and the food supply.⁵⁵

Occupy’s rapid spread was facilitated by social media, which allowed activists to schedule planning meetings and helped burgeoning movements in different cities connect with one another, recruit new members, raise funds, request supplies at encampments, and spread Occupy-related news. Further, social media provided a platform for people around the world to express support for Occupy,⁵⁶ or simply to give their own stories of economic hardship and political disillusionment, in the form of, for example, the popular Tumblr website, “We Are the 99%,” with photographs of people holding signs, many handwritten, discussing their concerns: the cost of health care, the burden of student loan debt, the difficulty of finding a job with a future.⁵⁷ Social media was also a valuable tool for Occupy participants to contest mainstream media portrayals with which they disagreed.⁵⁸ Participants and observers created new media sources as well—such as *The Occupied Wall Street Journal*, *The Occupied Oakland Tribune*, *The Boston Occupier*, the Spanish-language *Indig-Nación*, and many others⁵⁹—and journals such as *Tidal* for long-form pieces⁶⁰ to analyze what the movement was doing, and to respond to a widespread sense within the movement that mainstream media coverage had been lacking, unrepresentative, or unfair.⁶¹

Street’ Links Up with Locked-Out Teamsters, LABOR NOTES (Sept. 29, 2011), <http://labornotes.org/blogs/2011/09/occupy-wall-street-links-locked-out-teamsters>.

⁵² Occupy the SEC describes itself as an Occupy working group comprising “concerned citizens, activists, and financial professionals with decades of collective experience working at many of the largest financial firms in the industry.” Occupy the SEC, *Who We Are*, OCCUPYTHESEC.ORG, <http://www.occupythesecc.org/#who> (last visited July 23, 2012).

⁵³ The full text of the letter is available at Occupy the SEC’s website, <http://www.occupythesecc.org/letter/OSEC%20-%20OCC-2011-14%20-%20Comment%20Letter.pdf>.

⁵⁴ Yirmeyah Beckles, *Parents Build a Tent City at Lakeview Elementary with Help from Occupy Oakland Protesters*, OAKLANDNORTH.NET (June 17, 2012), <http://oaklandnorth.net/2012/06/17/parents-build-tent-city-at-lakeview-elementary-with-help-from-occupy-oakland-protesters/>; Zachary Slobig, *The Occupy Movement Takes On Elementary School Closures*, GOOD NEWS (June 21, 2012), <http://www.good.is/post/the-occupy-movement-takes-on-elementary-school-closures/>.

⁵⁵ See generally OCCUPY WALL STREET, <http://occupywallst.org/>; OCCUPY ARRESTS, <http://stpeteforpeace.org/occupyarrests.sources.html> (giving a running total of the number of Occupy protesters arrested around the U.S. since Occupy Wall Street began on Sept. 17, 2011).

⁵⁶ See, e.g., Derewicz, *supra* note 20 (“Depending on the occupation, dozens or hundreds of protestors supported the movement in person. On Facebook, thousands or hundreds of thousands of people showed support through joining a Facebook group, commentary, and sharing images.”)

⁵⁷ WE ARE THE 99 PERCENT, <http://wearethe99percent.tumblr.com/>.

⁵⁸ Neal Caren & Sarah Gaby, *Occupy Online: Facebook and the Spread of Occupy Wall Street* (Oct. 24, 2011), http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1943168&download=yes.

⁵⁹ OCCUPIED WALL STREET J., <http://occupiedwallstjournal.com/> (#1), <http://occupiedmedia.us/> (#2); OCCUPIED OAKLAND TRIB., <http://occupiedoaktrib.org/>; BOS. OCCUPIER, <http://bostonoccupier.com/>; INDIG-NACIÓN, <http://www.indig-nacion.org/>. See also DC MIC CHECK, <http://www.demicheck.org/>; OCCUPIED TIMES OF LONDON, <http://theoccupiedtimes.co.uk/>; OCCUPIED CHICAGO TRIB., <http://occupiedchicagotribune.org/>.

⁶⁰ See, e.g., TIDAL: <http://occupytheory.org/>; J. FOR OCCUPIED STUDIES: <http://occupiedstudies.org/>; N + 1: OCCUPY! OWS-INSPIRED GAZETTE: <http://nplusonemag.com/occupy>.

⁶¹ Eric Randall, *Media Non-Coverage of Occupy Wall Street Gets Lots of Media Coverage*, ATLANTIC WIRE (Sept. 28, 2011), <http://www.theatlanticwire.com/national/2011/09/media-non-coverage-occupy-wall-street-gets-lots-media-coverage/43013/>; Brian Stelter, *Protest Puts Coverage in Spotlight*, N.Y. TIMES (Nov. 20, 2011), <http://www.nytimes.com/2011/11/21/business/media/occupy-wall-street-puts-the-coverage-in-the-spotlight.html>.

In a relatively short span of time, the Occupy movement altered national political discourse. Polls conducted in December 2011 indicated that 48 percent of Americans “agreed with the concerns raised by Occupy.”⁶² A poll taken in October 2011 indicated that 67 percent of New York City voters agreed with Occupy participants’ views and 87 percent thought it was “okay that they are protesting.”⁶³ In the early weeks and months of Occupy, media coverage of the movement grew, and so too did coverage of economic inequality issues. In words widely seen as recognition of the concerns raised by Occupy, President Obama described inequality as something that “hurts us all” in a speech delivered at Osawatimie High School in Kansas, and declared it to be the “defining issue of our time” in his 2012 State of the Union address.⁶⁴ Political candidates on the left and right began to alter their messaging to acknowledge income inequality and other issues brought to the forefront by Occupy.⁶⁵ News coverage of income inequality increased five-fold between September and November, a fact some commentators attributed to Occupy.⁶⁶ During the week of November 14, 2011, when some of the largest U.S. Occupy encampments were evicted, Occupy-related stories accounted for approximately 13 percent of total U.S. news media coverage.⁶⁷ However, after the eviction of most encampments, the movement suffered a decline in mainstream media visibility that it has struggled to overcome.⁶⁸

2. Occupy in the Context of Recent International Protests

Occupy Wall Street began in the context of an intense period of mass social mobilization around the globe. Many countries erupted in mass protest in 2010 through 2012, and, in a way rarely seen previously, protesters garnered widespread attention, were able to elevate concerns through direct communication, and influenced one another across border while urging major transformations within their own countries.

Tunisian fruit vendor Mohamed Bouazizi’s self-immolation in December 2010 is often credited as the spark for a wave of protests throughout the Middle East and North Africa.

⁶² Michael Schmidt, *Less Visible Occupy Movement Looks for Staying Power*, N.Y. TIMES (Mar. 31, 2012), <http://www.nytimes.com/2012/04/01/us/for-occupy-movement-a-challenge-to-recapture-momentum.html>.

⁶³ *October 17, 2011—New Yorkers Back Wall St. Protesters 3-1, Quinnipiac University Poll Finds: Stay As Long As You Want, Even Republicans Say*, QUINNIPIAC U. POLLING INST. (Oct. 17, 2011), <http://www.quinnipiac.edu/institutes-and-centers/polling-institute/new-york-city/release-detail?ReleaseID=1662>.

⁶⁴ *Remarks by the President on the Economy in Osawatimie, Kansas*, WHITE HOUSE OFFICE OF THE PRESS SEC’Y (Dec. 6, 2011), <http://www.whitehouse.gov/the-press-office/2011/12/06/remarks-president-economy-osawatimie-kansas>; *State of the Union 2012: Obama Speech Transcript*, WASH. POST (Jan. 24, 2012), http://www.washingtonpost.com/politics/state-of-the-union-2012-obama-speech-excerpts/2012/01/24/gIQA9D3QOQ_story.html. See, e.g., Janelle Bouie, *Obama Takes Cues from Occupy*, AMERICAN PROSPECT (Dec. 6, 2011), <http://prospect.org/article/obama-takes-cues-occupy>; James Oliphant, *Did Obama Embrace Occupy Movement in Kansas Speech?*, L.A. TIMES (Dec. 7, 2011), <http://articles.latimes.com/2011/dec/07/news/la-pn-obama-occupy-kansas-20111207>.

⁶⁵ *The Republican Contest*, N.Y. TIMES (Jan. 10, 2012), <http://www.nytimes.com/2012/01/11/opinion/the-republican-contest.html>; *What They Don’t Want to Talk About*, N.Y. TIMES (Jan. 14, 2012), http://www.nytimes.com/2012/01/15/opinion/sunday/what-they-dont-want-to-talk-about.html?_r=1&partner=rssnyt&emc=rss; Michael McAuliff, *Occupy Wall Street’s Message: Senate Democrats Say It Will Dominate 2012 Elections*, HUFFINGTON POST (Nov. 3, 2011, 5:09 PM), http://www.huffingtonpost.com/2011/11/03/occupy-wall-street-message-senate-democrats-2012-elections_n_1074168.html; Chris Moody, *How Republicans Are Being Taught to Talk About Occupy Wall Street*, YAHOO! NEWS (Dec. 1, 2011), <http://news.yahoo.com/blogs/ticket/republicans-being-taught-talk-occupy-wall-street-133707949.html>.

⁶⁶ Dylan Byers, *Occupy Wall Street is Winning*, POLITICO (Nov. 11, 2011 2:37 PM), http://www.politico.com/blogs/bensmith/1111/Occupy_Wall_Street_is_winning.html.

⁶⁷ Jesse Holcomb, *Biggest Week Yet for Occupy Wall Street Coverage*, PEW RES. CENTER (Nov. 14-20, 2011), http://www.journalism.org/index_report/pej_news_coverage_index_november_1420_2011.

⁶⁸ Schmidt, *supra* note 62 (“Driven off the streets by local law enforcement officials, who have evicted protesters from their encampments and arrested thousands, the movement has seen a steep decline in visibility With less visibility, the movement has received less attention from the news media, taking away a national platform.”).

Following his death, hundreds of thousands of people took to the streets to demand democracy and government reform in Tunisia, Egypt, Bahrain, Yemen, and elsewhere.⁶⁹

The “indignants” (*los indignados*) movement in Spain and anti-austerity protests in Greece were also inspirations for many U.S.-based Occupy participants, and the movements continue to frequently and directly communicate with one another.⁷⁰ These movements were largely motivated by widespread dissatisfaction with the state of the economy and a desire for democratic reforms.⁷¹ Protesters in both Spain and Greece occupied public squares for extended periods of time, occasionally encountering violent responses from police.⁷²

Beginning in May 2011, Chilean students led a series of protests, including the occupation of hundreds of school buildings, and demanded sweeping changes to the country’s education system.⁷³ The summer of 2011 also saw massive protests in Israel: Protesters set up a tent city in July 2011 in a wealthy Tel Aviv neighborhood to call attention to high rent costs.⁷⁴ The protests spread throughout the country, and on September 3, 2011, hundreds of thousands of people across the country participated in the largest demonstration in Israel’s history, calling for “social justice, a lower cost of living and a clear government response to the concerns of an increasingly squeezed middle class.”⁷⁵

As the Occupy movement grew in the United States, it in turn sparked further protests around the world, inspiring people to take to the streets to advance their own related and

⁶⁹ Kareem Fahim, *Slap to a Man’s Pride Set Off Tumult in Tunisia*, N.Y. TIMES (Jan. 21, 2011), http://www.nytimes.com/2011/01/22/world/africa/22sidi.html?pagewanted=1&_r=1&src=twrhp; David Kirkpatrick, *Egypt Erupts in Jubilation as Mubarak Steps Down*, N.Y. TIMES (Feb. 11, 2011), <http://www.nytimes.com/2011/02/12/world/middleeast/12egypt.html?pagewanted=all>; Garry Blight, Sheila Pulham & Paul Torpey, *Arab Spring: An Interactive Timeline of Middle East Protests*, GUARDIAN (Jan. 5, 2012), <http://www.guardian.co.uk/world/interactive/2011/mar/22/middle-east-protest-interactive-timeline>. The Arab Spring protests themselves emerged out of years of past protest actions and broad political activism; for an explanation of Egypt’s protest history, see Phil England, *Fear No More: Power of the People*, NEW INTERNATIONALIST (May 2011), <http://www.newint.org/features/web-exclusive/2011/04/20/egypt-revolution-gigi/> (last visited July 23, 2012) (interview with Gigi Ibrahim).

⁷⁰ For more on the links between the Occupy movement and other “horizontal movements” around the world, see Marina Sitrin, *One No! Many Yeses*, 1 OCCUPY! AN OWS-INSPIRED GAZETTE 4-5, <http://www.nplusonemag.com/OCCUPY-GAZETTE.pdf> (last visited July 23, 2012).

⁷¹ Protests began in Greece in mid-2010 in response to newly announced austerity measures, and in Spain in early 2011. Protesters in Spain began to assemble in public squares across the country on May 15, 2011, and were followed shortly thereafter by protesters in Greece. *Europe’s Most Earnest Protesters*, ECONOMIST (July 14, 2011), <http://www.economist.com/node/18959259>; Jordi Pérez Colomé, *Los Indignados: The Spanish Youth Revolution*, COMMONWEAL (Aug. 9, 2011), <http://commonwealmagazine.org/los-indignados>; ¡DEMOCRACIA REAL YA!, <http://www.democraciarealya.es/>; Gavin Hewitt, *Greece Crisis: Revolution in the Offing?*, BBC NEWS (June 19, 2011, 7:53 AM), <http://www.bbc.co.uk/news/world-europe-13830466>.

⁷² Helena Smith, *Greek Police Face Investigation After Protest Violence*, GUARDIAN (July 1, 2011), <http://www.guardian.co.uk/world/2011/jul/01/greek-police-investigation-protest-violence>; Rebeca Carranco, *La Carga Policial Desata la Indignación en Barcelona*, EL PAÍS (May 27, 2011), http://politica.elpais.com/politica/2011/05/27/actualidad/1306489864_137130.html (Spain); Víctor Mondelo, *La Dureza Policial Multiplica la Indignación en Barcelona*, EL MUNDO (May 28, 2011), <http://www.elmundo.es/elmundo/2011/05/27/barcelona/1306518767.html> (Spain).

⁷³ *The Fraught Politics of the Classroom*, ECONOMIST, Oct. 29, 2011, <http://www.economist.com/node/21534785>; Gideon Long, *Chile Student Protests Point to Deep Discontent*, BBC NEWS (Aug. 11, 2011, 11:20 AM), <http://www.bbc.co.uk/news/world-latin-america-14487555>.

⁷⁴ Harriet Sherwood, *Tel Aviv’s ‘Tent City’ Protesters Dig In to Demand Social Justice*, GUARDIAN (Aug. 4, 2011), <http://www.guardian.co.uk/world/2011/aug/04/tel-aviv-tent-city-protesters>.

⁷⁵ Harriet Sherwood, *Israeli Protests: 430,000 Take to Streets to Demand Social Justice*, GUARDIAN (Sept. 4, 2011), <http://www.guardian.co.uk/world/2011/sep/04/israel-protests-social-justice>; Kevin Flower & Guy Azriel, *Hundreds of Thousands of Israelis Protest Cost of Living*, CNN (Sept. 3, 2011), http://articles.cnn.com/2011-09-03/world/israel.protest_1_protest-tel-aviv-israeli-politicians?_s=PM:WORLD.

interconnected causes.⁷⁶ The demands of protesters reflected local contexts, but also reflected common socioeconomic problems and concerns about undemocratic governance.

The responses from many authorities also shared traits. Where protesters established encampments, governments often sought to evict protesters. And police forces have been ordered to break up protests, often with force. Various state entities have also enacted or are considering legislation that would increase the penalties for actions associated with protest.

The examples below represent just a few of the many recent protests that share focus or structure, or mechanisms governments used to respond.

In **Bahrain**, protests began on February 14, 2011, inspired by events in Tunisia and Egypt in particular. After the emergence of Occupy Wall Street, parts of the protest movement came to be known as Occupy Bahrain.⁷⁷ Protesters have held frequent demonstrations and engaged in an occupation of the Pearl Roundabout, an intersection in the capital city of Manama, to call for socioeconomic justice and constitutional and political reforms.⁷⁸ National security forces have responded by cracking down on the protesters, including through the widespread use of tear gas. According to Amnesty International, Bahraini human rights groups have reported at least 13 deaths resulting from the use of tear gas since the protests began in 2011.⁷⁹ In late 2011, the government of Bahrain reportedly hired John Timoney, a former U.S. police chief in Philadelphia and Miami who has used controversial methods to police public demonstrations, to train its police.⁸⁰ Human rights advocates criticized Timoney's appointment and alleged that as a police chief in the United States, his departments used disproportionate force against protesters, particularly in Miami.⁸¹

Protesters in **South Africa** have launched a series of actions, including a demonstration in a wealthy white suburb of Cape Town to call attention to the lack of housing, jobs, and land for the poor.⁸² In response, police in riot gear broke up the demonstration and sprayed participants with blue dye launched from a water cannon.⁸³ In another Cape Town neighborhood, faculty and students of South Peninsula High School began a gradual

⁷⁶ See *Occupy Protests Around the World: Full List Visualised*, GUARDIAN DATABLOG, <http://www.guardian.co.uk/news/datablog/2011/oct/17/occupy-protests-world-list-map> (last visited July 23, 2012); see also OCCUPYLIST, www.occupylist.org (global directory of occupations, media and links).

⁷⁷ See *Occupy Bahrain*, FACEBOOK, <https://www.facebook.com/Occupy.BH> (last visited July 23, 2012).

⁷⁸ *Bahrain Mourners Call for End to Monarchy*, GUARDIAN (Feb. 18, 2011), <http://www.guardian.co.uk/world/2011/feb/18/bahrain-mourners-call-downfall-monarchy>; Martin Chulov, *Bahrain Destroys Pearl Roundabout*, GUARDIAN (Mar. 18, 2011), <http://www.guardian.co.uk/world/2011/mar/18/bahrain-destroys-pearl-roundabout>.

⁷⁹ *Bahrain's Use of Tear Gas Against Protesters Increasingly Deadly*, AMNESTY INT'L (Jan. 26, 2012), <http://www.amnesty.org/en/news/bahrain-s-use-tear-gas-against-protesters-increasingly-deadly-2012-01-26>; *Bahrain Police Fire Teargas at Protesters in Manama*, GUARDIAN (Feb. 13, 2012), <http://www.guardian.co.uk/world/2012/feb/13/bahrain-police-teargas-protesters>.

⁸⁰ *Timoney Discusses New Job Training Bahraini Police*, NPR.ORG (Jan. 18, 2012), <http://www.npr.org/2012/01/18/145413376/timoney-discusses-bahraini-police-force>.

⁸¹ *Bahrain: Human Rights Group Expresses Concern Over Appointment*, BAHRAIN CENTER FOR HUMAN RIGHTS (Dec. 3, 2011), <http://www.bahrainrights.org/en/node/4879>; Matthew Cassel, *Even Bahrain's Use of 'Miami Model' Policing Will Not Stop the Uprising*, GUARDIAN (Dec. 3, 2011), http://www.guardian.co.uk/commentisfree/2011/dec/03/bahrain-miami-model-policing?CMP=tw_t_gu.

⁸² *Occupy South Africa—Operation Ubuntu*, FACEBOOK, <http://www.facebook.com/occupysa>; Joe Hani, *Occupy South Africa: "We Are All Kings and Queens!"*, ROAR MAGAZINE (Jan. 27, 2012), <http://roarmag.org/2012/01/occupy-south-africa-we-are-all-kings>.

⁸³ Sandiso Phaliso, *South Africa: Charges Against Rondebosch Occupiers Withdrawn—Except for Wanza*, WEST CAPE NEWS (Jan. 31, 2012), <http://allafrica.com/stories/201201311200.html>; Nombulelo Damba, *South Africa: Rondebosch Common Becomes Site of Battle Over Inequality*, WEST CAPE NEWS (Jan. 30, 2012), <http://allafrica.com/stories/201201302037.html>.

occupation in May 2012 of empty school facilities after trying for years to obtain permission from the government to use the building.⁸⁴

In **Nigeria**, activists had been laying the foundation for a mass protest movement since at least October 2011.⁸⁵ They were influenced by the growing attention on the Occupy protests, and began to call themselves Occupy Nigeria. The Nigerian government's announcement in January 2012 that it intended to end a long-standing fuel subsidy sparked a wave of street protests.⁸⁶ Partly relying on social media, the protests spread rapidly throughout the country leading to approximately three weeks of concentrated unrest. The protesters established 24-hour encampments for part of that time in various Nigerian cities, including Lagos and Abuja.⁸⁷ The protests were met with a diverse and at times brutal law enforcement response. Occupy Nigeria protesters interviewed by a member of the Research Team reported being subjected to tear gas, beatings, arrests, electronic surveillance, and threats of live ammunition fire.⁸⁸ In the course of the protests, some protesters and bystanders were killed by live ammunition fire and the total number of dead, and the circumstances of these deaths, remains unclear even months later.⁸⁹ According to protesters who identified with Occupy Nigeria, the protests died down as a result of the combination of state concessions,⁹⁰ excessive force and military intervention,⁹¹ and decreased willingness of the labor movement to align themselves with the protests. Occupy Nigeria continues and has since widened its focus to include among its grievances political corruption, poverty and inequality, and police intimidation.⁹²

In **Quebec, Canada**, the provincial government responded to student protests in 2012 over proposed tuition increases by cracking down against protesters and passing Law 78, which imposes harsh penalties on protesters, including holding protest organizers responsible for violations of the law committed by any protest participant, requiring that organizers give police eight hours' notice and a planned itinerary for any demonstration of more than 50 people, and imposing heavy fines on individuals and student organizations for violating the law.⁹³ Law 78 has been widely criticized, including by the UN High Commissioner for Human Rights, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, and Amnesty International.⁹⁴ The new law led many Canadians to join the

⁸⁴ Ilse Fredericks, *High School Starts 'Occupy' Campaign*, INDEP. ONLINE (May 17, 2012), <http://www.iol.co.za/news/south-africa/western-cape/high-school-starts-occupy-campaign-1.1299143#.T-jGMhdI92A>.

⁸⁵ Interview with four Occupy Nigeria activists (WGH21) (2012).

⁸⁶ Elizabeth Flock, *Occupy Nigeria: Police, Protesters Clash as Nationwide Strike Paralyzes Country*, WASH. POST (Jan. 9, 2012 10:50 AM), http://www.washingtonpost.com/blogs/blogpost/post/occupy-nigeria-police-protesters-clash-as-nationwide-strike-paralyzes-country/2012/01/09/gIQAUpQZIP_blog.html; Ovetta Sampson, *Occupy Nigeria Victory: President to Cut Fuel Prices*, CHRISTIAN SCI. MONITOR (Jan. 16, 2012), <http://www.csmonitor.com/World/Africa/2012/0116/Occupy-Nigeria-victory-president-to-cut-fuel-prices>.

⁸⁷ Interview with four Occupy Nigeria activists (WGH21) (2012).

⁸⁸ *Id.*

⁸⁹ *Id.*; Sampson, *supra* note 86.

⁹⁰ Sampson, *supra* note 86. *See also* Interview with four Occupy Nigeria activists (WGH21) (2012).

⁹¹ Authorities reportedly stationed the military on the streets of Lagos and prohibited further protests; soldiers enforced a curfew, ordered people to return home, and stated that they had orders to shoot. Interview with four Occupy Nigeria activists (WGH21) (2012).

⁹² *See* Occupy Nigeria, <http://www.facebook.com/pages/Occupy-Nigeria/160388144055585>; *see also* Interview with four Occupy Nigeria activists (WGH21) (2012).

⁹³ Bill No. 78, Assemblée Nationale du Québec, <http://www.assnat.qc.ca/en/travaux-parlementaires/projets-loi/projet-loi-78-39-2.html>; *Emergency Bill Would See Quebec Student Leaders Fined Up to \$35K for Blocking Classes*, NAT'L POST (May 18, 2012), <http://news.nationalpost.com/2012/05/18/bill-78-quebec/>; *Montreal Police Pepper-Spray Bar Patrons Amid Protest*, CBC NEWS (May 20, 2012), <http://www.cbc.ca/news/canada/montreal/story/2012/05/20/quebec-student-protest-pepper-spray-people-on-a-bar-patio.html>.

⁹⁴ U.N. Office of the High Commissioner for Human Rights, *Opening Statement by Navi Pillay, High Commissioner for Human Rights to the Human Rights Council 20th Special Session* (June 18, 2012), <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12245&LangID=e>; *Quebec Law Breaches Canada's International Human Rights Obligations*, AMNESTY INT'L (May 25, 2012), <http://www.amnesty.org/en/news/quebec-law-breaches-canada-s-international-human-rights-obligations-2012-05-26>;

protests in defense of civil liberties, including those who were unaffiliated with the student movement, and others who did not necessarily agree with the movement's original demands.⁹⁵

In **Russia**, marches, rallies, “people’s strolls,” and sit-ins in public parks have been ongoing since at least December 2011 in response to legislative and presidential elections that protesters perceived as fraudulent.⁹⁶ The state has cracked down on protesters, sending large numbers of riot police to break up protests, harassing political opposition leaders, and evicting protesters who occupy public parks.⁹⁷ In June 2012, President Vladimir Putin signed a new law that increases penalties for public protest, echoing Quebec’s Law 78. Russia’s new protest law dramatically raises the fines for taking part in a demonstration that harms persons or property, providing for fines against individuals of up to US\$9,000, and against organizations up to US\$30,000.⁹⁸ The chairman of Russia’s Civil Society and Human Rights Council urged Russian President Vladimir Putin to veto the law, and the Council issued a statement warning that, “[t]he law’s main defect is that in substance it suggests criminalizing the procedure of using the basic constitutional right—the right to peacefully assemble.”⁹⁹

Many foreign government officials, when criticized for their treatment of protesters, have pointed to the practices of other countries, and especially the United States, to justify their own actions. For example:

- Sergey Ivanov, the head of Russia’s presidential administration, has defended Russia’s new protest law by saying it follows “best world practices” and by pointing to similar rules on protest in the United States and the United Kingdom.¹⁰⁰ Russia also alluded to the evictions of Occupy camps in other countries as justification for its own eviction of protesters from a public park.¹⁰¹

Lee Berthiaume, *Second United Nations Official Blasts Quebec’s Anti-Protest Law*, POSTMEDIA NEWS (June 21, 2012),

<http://www.canada.com/news/Second+United+Nations+official+blasts+Quebec+anti+protest/6821056/story.html>.

⁹⁵ Jeff Heinrich, *Pot-Banging Against Bill 78, Quebec Law Limiting Protests, Is Catching On*, MONTREAL GAZETTE (May 25, 2012), <http://www.montrealgazette.com/technology/Bill+opponents+with+bang/6672798/story.html>.

⁹⁶ Ellen Barry and Michael Schwartz, *After Election, Putin Faces Challenges to Legitimacy*, N.Y. TIMES (Mar. 5, 2012), <http://www.nytimes.com/2012/03/06/world/europe/observers-detail-flaws-in-russian-election.html?pagewanted=all>. In May 2012, a group of protesters began a sit-in at a park in the Chistye Prudy neighborhood in Moscow, naming the camp Occupy Abay (after the statue of a poet that stands in the park). Miriam Elder, *Russian Protests: Thousands March in Support of Occupy Abay Camp*, GUARDIAN (May 13, 2012), <http://www.guardian.co.uk/world/2012/may/13/russian-protests-march-occupy-abay>. “People’s strolls” is the term used by protest leaders to refer to improvised marches through city streets and parks, some of which continue throughout the night. Julia Ioffe, *The Boy on the Bicycle*, NEW YORKER (May 11, 2012), <http://www.newyorker.com/online/blogs/comment/2012/05/russia-protests-julia-ioffe-viral-photo.html>.

⁹⁷ Ioffe, *supra* note 96; Julia Ioffe, *The Price of Opposition in Russia*, NEW YORKER (June 14, 2012), <http://www.newyorker.com/online/blogs/newsdesk/2012/06/search-and-destroy-navalny-sobchak.html>.

⁹⁸ Ellen Barry, *Russian Lawmakers Take Steps to Impose Steep Fines on Demonstrators*, N.Y. TIMES (June 5, 2012), <http://mobile.nytimes.com/article?a=958924&f=110>.

⁹⁹ Gleb Bryanski, *Russia’s Putin Signs Anti-Protest Law Before Rally*, REUTERS (June 8, 2012), <http://www.reuters.com/article/2012/06/08/us-russia-protests-idUSBRE8570ZH20120608>.

¹⁰⁰ *Russia Protest Law Follows “Best World Practices” –Sergey Ivanov*, RT (Russ.) (June 22, 2012), <http://rt.com/politics/ivanov-russia-protests-law-interview-476/> (“Ivanov stressed that the United Kingdom and the United States have more or less the same rules.”).

¹⁰¹ Marc Bennetts, *Russia’s Anti-Putin Protesters Bring Occupy to Moscow*, RIA NOVOSTI (May 11, 2012), <http://en.rian.ru/analysis/20120511/173395765.html> (quoting President Putin’s spokesman saying the camps would be evicted: “All such camps share the same fate, all over the world.”).

- Jean Charest, the leader of **Quebec's** government, defended Law 78, described above: "Any comparison of the legislation with what is done elsewhere demonstrates that it's quite reasonable and standard practice."¹⁰²
- In **Indonesia**, after the military and police broke up a peaceful West Papuan protest on October 19, 2011, in favor of independence from Indonesia, beating participants and arresting 300, the Indonesian President justified the government's response by comparing it to the then hundreds of detentions of protesters in New York.¹⁰³
- Advisers to **Syria's** leader Bashar al-Assad reportedly urged him to point to the response to Occupy Wall Street in the United States as a way of countering criticism of his regime's attacks against protesters.¹⁰⁴
- **Egypt's** state television channel reportedly referenced the U.S. response to Occupy as justification for repression of protests in Tahrir Square against the military government.¹⁰⁵

These examples highlight the importance of examining in detail the U.S. response to Occupy Wall Street for its impact on policing practices and protest rights outside of the United States, as well as inside. The treatment of protesters by some other countries has been graver than that suffered by Occupy protesters in the United States. Yet many of the highly visible policing responses in the United States violate international law and do not, in fact, serve as examples of international practice to which other nations should turn.

3. Public Protest in the United States

Many of the concerns voiced by Occupy Wall Street participants have been raised by earlier protest movements in U.S. history, and there are notable similarities in the tactics used by participants, including marches, sit-ins, and long-term encampments. There are also notable similarities in both the police and the public response. Police often sought to forcibly break up these protests, and protesters were subject to criticism from the public, government, and the press.¹⁰⁶ This section briefly reviews several prominent protest movements that took place in the United States in the twentieth century, in which ordinary people came together to demand basic civil and economic rights.

On June 7, 2012, U.S. District Judge Jed Rakoff issued a decision declaring that a civil lawsuit against the New York Police Department regarding its handling of protesters on the Brooklyn Bridge could go forward. He began the decision with a declaration:

¹⁰² Ian Austen, *Emergency Law Broadens Canada's Sympathy for Quebec Protests*, N.Y. TIMES (June 5, 2012), <http://www.nytimes.com/2012/06/06/world/americas/emergency-law-broadens-canadas-sympathy-for-quebec-protests.html>.

¹⁰³ *Indonesia: Release Participants of Peaceful Gathering in Papua*, AMNESTY INT'L (Oct. 21, 2011), <http://www.amnesty.org.au/news/comments/27058/>; Eben Kirksey, *Indonesian President Open to Dialogue with Amnesty International*, EBEN KIRKSEY (Oct. 28, 2011, 8:08 AM), <http://ebenkirksey.blogspot.com/2011/10/indonesian-president-open-to-dialog.html>.

¹⁰⁴ Phoebe Greenwood, *Hackers Leak Assad's Astonishing Office Emails*, TELEGRAPH (Feb. 7, 2012), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9067118/Anonymous-hackers-leak-Syrias-Bashar-al-Assad-astonishing-office-emails-discussing-Barbara-Walters.html>.

¹⁰⁵ *News Flash: Egypt Justifying Renewed Oppression by Pointing to Occupy Wall Street Crackdowns in U.S.*, THINK PROGRESS (Nov. 21, 2011 9:00 AM), <http://thinkprogress.org/special/2011/11/21/373137/egypt-justifying-renewed-oppression-by-pointing-to-occupy-wall-street-crackdowns-in-us/?mobile=nc>.

¹⁰⁶ The public meetings of abolitionists and women's rights activists in the first half of the nineteenth century were criticized and mocked in the press, and at times violently dispersed by mobs. John D. Inazu, *The Forgotten Freedom of Assembly*, 84 TULANE L. REV. 565, 584-88 (2010); Linda J. Lumsden, *Women and Freedom of Expression Before the Twentieth Century*, in THE FIRST AMENDMENT: FREEDOM OF ASSEMBLY AND PETITION: ITS CONSTITUTIONAL HISTORY AND THE CONTEMPORARY DEBATE 195-96 (Margaret M. Russell ed., 2010). Participants in the workers' rights movement, which engaged in rallies, pickets, marches, general strikes, and sit-down strikes, were subject to frequent arrests and prosecutions for much of the twentieth century. See generally Inazu, *supra*; see also James Gray Pope, *Worker Lawmaking, Sit-Down Strikes, and the Shaping of American Industrial Relations, 1935-1958*, 24 LAW & HIST. REV. 45 (2006).

What a huge debt this nation owes to its “troublemakers.” From Thomas Paine to Martin Luther King, Jr., they have forced us to focus on problems we would prefer to downplay or ignore. Yet it is often only with hindsight that we can distinguish those troublemakers who brought us to our senses from those who were simply...troublemakers. Prudence, and respect for the constitutional rights to free speech and free association, therefore dictate that the legal system cut all non-violent protesters a fair amount of slack.¹⁰⁷

As Judge Rakoff noted, throughout the history of the United States, people have assembled in public spaces to call attention to a wide variety of causes by making noise, causing disruptions, and otherwise “making trouble.”¹⁰⁸

The Bonus Army and protest camps. During the Great Depression, thousands of World War I veterans, most unemployed and many accompanied by their families, set up camps around Washington, D.C. in the summer of 1932 to demand the early payment of bonuses that Congress had promised them. They pledged to remain in their camps until the bonuses were granted. The protesters, known as the “Bonus Army,” enjoyed considerable public support, but the Hoover Administration and some members of Congress refused to pay out the bonuses early, citing financial strains on government resources (although the government had recently issued loans to banks and the railroads through the newly created Reconstruction Finance Corporation). The U.S. Army then forcibly evicted the Bonus Army from its camps by using tanks, cavalry, infantry cordons, bayonets, and sabers.¹⁰⁹

The Civil Rights Era and the Poor People’s Campaign. In the 1950s and ‘60s, civil rights organizations used a wide variety of protest tactics, including sit-ins in public spaces, economic boycotts, and frequent marches in locations across the southern United States, to demand the repeal of discriminatory Jim Crow laws and the passage of federal civil rights legislation. The responses from local governments included mass arrests of hundreds of protesters, part of a strategy to break the movement by ensnaring protesters and civil rights

¹⁰⁷ *Garcia v. Bloomberg*, F. Supp. 2d, 2012 WL 2045756 (S.D.N.Y. 2012).

See also *Edwards v. South Carolina*, 372 U.S. 229, 237-38 (1963) (*quoting* *Terminiello v. Chicago*, 337 U.S. 1, 4-5 (1949)): “The Fourteenth Amendment does not permit a State to make criminal the peaceful expression of unpopular views. ‘(A) function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. That is why freedom of speech ...is... protected against censorship or punishment, unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest. There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardization of ideas either by legislatures, courts, or dominant political or community groups.’” Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark.

¹⁰⁸ *See* Jeremy Kessler, *The Closing of the Public Square*, NEW REPUBLIC, Jan. 12, 2012, <http://www.tnr.com/book/review/the-closing-the-public-square-john-inazu-timothy-zick> (reviewing two books on the freedom of assembly and its recent restriction by government officials) (“While the tactics of civil rights protesters ‘were generally peaceful,’ Zick helpfully reminds us of how disruptive they actually were, attracting outraged crowds and paralyzing city centers. The solicitation of mob violence was a civil rights strategy, and officials often used the possibility of such a hostile audience reaction to shut down protest. In the ‘60s, however, ‘the Court appeared to impose an obligation on police officers to protect public speakers rather than seek to suppress public contention based upon the mere possibility that violence or public disorder would occur.’ The Court went even further in some cases, protecting even sit-ins at privately owned venues, such as segregated drug stores.” *Id.*)

¹⁰⁹ *See generally* PAUL DICKSON AND THOMAS B. ALLEN, *THE BONUS ARMY: AN AMERICAN EPIC* (2004); Philip Scranton, *The Bonus Army Marches on Washington*, BLOOMBERG NEWS (May 29, 2012), <http://www.bloomberg.com/news/2012-05-29/the-bonus-army-marches-on-washington.html>; *The Bonus March (May-July, 1932)*, PBS AMERICAN EXPERIENCE, <http://www.pbs.org/wgbh/amex/macarthur/peoplevents/pandeAMEX89.html> (last visited July 20, 2012); Brent Cox, *What Does The Bonus Army Tell Us About Occupy Wall Street?*, AWL (Oct. 25, 2011), <http://www.theawl.com/2011/10/what-does-the-bonus-army-tell-us-about-occupy-wall-street>.

lawyers in costly and time-consuming court battles, as well as state-sponsored violence, in which police forces in many southern states turned fire hoses, clubs, and attack dogs on peaceful protesters.¹¹⁰ The U.S. government also engaged in widespread surveillance of civil rights activists, as well as infiltration of civil rights groups designed to disrupt and discredit them.¹¹¹

While the Civil Rights Era is today widely honored as an important and necessary struggle for basic human rights, at the time, politicians on both ends of the political spectrum were uneasy about the movement and its tactics.¹¹² Dr. Martin Luther King Jr. and others faced further criticism and opposition when they began to link demands for racial justice with economic justice and opposition to the Vietnam War.¹¹³ In a speech delivered in April 1967, Dr. King framed his opposition to the war in moral terms, and argued that:

True compassion is more than flinging a coin to a beggar. It comes to see that an edifice which produces beggars needs restructuring... A nation that continues year after year to spend more money on military defense than on programs of social uplift is approaching spiritual death.¹¹⁴

Time Magazine called this “demagogic slander that sounded like a script for Radio Hanoi.”¹¹⁵ The *New York Times* described the arguments as “wasteful and self-defeating.”¹¹⁶

¹¹⁰ See, e.g., Steven E. Barkan, *Legal Control of the Southern Civil Rights Movement*, 49 AM. SOC. REV. 552 (1984); LET FREEDOM RING: A DOCUMENTARY HISTORY OF THE MODERN CIVIL RIGHTS MOVEMENT (Peter B. Levy ed., 1992) [hereinafter LET FREEDOM RING].

¹¹¹ GERALD D. MCKNIGHT, *THE LAST CRUSADE: MARTIN LUTHER KING, JR., THE FBI, AND THE POOR PEOPLE'S CAMPAIGN 5-6* (1998) [hereinafter *THE LAST CRUSADE*]. The Church Committee later found these operations, part of the FBI's Counter Intelligence Program (COINTELPRO), to be “aimed squarely at preventing the exercise of First Amendment rights of speech and association.” See U.S. SENATE, FINAL REPORT OF THE SELECT COMMITTEE TO STUDY GOVERNMENTAL OPERATIONS WITH RESPECT TO INTELLIGENCE ACTIVITIES, 94th Congress, 2nd session *reprinted in* LET FREEDOM RING, *supra* note 110, at 220; see also <http://www.intelligence.senate.gov/churchcommittee.html>.

¹¹² Southern segregationist politicians, predictably, vilified civil rights activists. The Kennedy Administration repeatedly expressed concern at the movement's practices of public marches and direct action. In 1961, U.S. Attorney General Robert Kennedy asked civil rights leaders for a “cooling off” period, “in which civil rights leaders [would pursue] voting rights issues rather than conducting violence-provoking direct action that embarrassed the United States on the world stage.” *Biography: Robert F. Kennedy*, FREEDOM RIDERS, PBS.ORG, <http://www.pbs.org/wgbh/americanexperience/freedomriders/people/robert-f-kennedy>; see also *Kennedy, Robert Francis (1925-1968)*, in *ENCYCLOPEDIA, THE MARTIN LUTHER KING, JR. RESEARCH AND EDUCATION INSTITUTE*, http://mlk-kpp01.stanford.edu/index.php/encyclopedia/encyclopedia/enc_kennedy_robert_franis_19251968/. In 1963, President John F. Kennedy discouraged the March on Washington as “the wrong kind of demonstration at the wrong time.” Robert Dallek, *President John F. Kennedy's Civil Rights Quandary*, AM. HIST., Aug. 2003, <http://www.historynet.com/president-john-f-kennedys-civil-rights-quandary.htm>. Note that Kennedy was a firm supporter of civil rights; his argument was that the March on Washington might galvanize opposition to civil rights legislation. *Id.* In 1964, religious leader Billy Graham urged Martin Luther King Jr. to call for “a moratorium on demonstrations until people have an opportunity to digest the new Civil Rights act.” Curtis J. Evans, *White Evangelical Protestant Responses to the Civil Rights Movement*, 102 HARV. THEOLOGICAL REV. 245, 260 (2009) (citing *Graham Predicts Worse Violence*, N.Y. TIMES (Aug. 16, 1965); *Billy Graham Links Concern with Social Issues to Religious Conversion*, N.Y. TIMES (Dec. 16, 1966)). Dr. King and fellow activists instead led the Selma to Montgomery marches in 1965, to which local police forces responded with extreme violence, resulting in severe injuries to many protesters. SELMA: THE BRIDGE TO FREEDOM, *in* LET FREEDOM RING, *supra* note 110, at 149-72.

¹¹³ Stephanie Siek, *King's Final Message: Poverty is a Civil Rights Battle*, CNN (Jan. 16, 2012 1:51 PM), <http://inamerica.blogs.cnn.com/2012/01/16/kings-final-message-poverty-is-a-civil-rights-battle/>. For more on this period in King's life, see *THE LAST CRUSADE*, *supra* note 111, and THOMAS F. JACKSON, FROM CIVIL RIGHTS TO HUMAN RIGHTS: MARTIN LUTHER KING, JR., AND THE STRUGGLE FOR ECONOMIC JUSTICE (2006).

¹¹⁴ Dr. Martin Luther King, Jr., *Beyond Vietnam: A Time to Break Silence*, speech delivered at Riverside Church, New York City (Apr. 4, 1967), available at <http://www.americanrhetoric.com/speeches/mlkatimetobreaksilence.htm>.

¹¹⁵ *Beyond Vietnam: 40th Anniversary of King's Landmark Antiwar Speech*, DEMOCRACY NOW! (Apr. 4, 2007), http://www.democracynow.org/2007/4/4/beyond_vietnam_40th_anniversary_of_kings (transcript).

¹¹⁶ Editorial, *Dr. King's Error*, N.Y. TIMES (Apr. 7, 1967), at A36, http://mlk-kpp01.stanford.edu/kingweb/liberation_curriculum/pdfs/vietnameditorials.pdf.

At the time of his assassination in April 1968, Dr. King was organizing the “Poor People’s Campaign” (PPC) to address issues of economic justice, including unemployment and underemployment, and the need for better education and a living wage.¹¹⁷ On May 13, weeks after Dr. King’s assassination, protesters erected a tent city on the National Mall, which they named Resurrection City.¹¹⁸ The protesters demanded a “fair share of America’s wealth and opportunity.”¹¹⁹ The PPC was highly unpopular, and many called for the demonstrations to be blocked on health and safety grounds. However, President Johnson initially did not evict the demonstrators, basing his decision on the constitutional protections of speech and assembly.¹²⁰ The camp remained for six weeks, until negotiations between Southern Christian Leadership Conference leaders, the Department of Justice, and Washington, D.C. police resulted in its peaceful eviction.¹²¹

Anti-Vietnam War protests. Like the civil rights movement and the Occupy movement, the Anti-Vietnam War movement used a variety of methods to convey its messages. Some protesters worked on public education through teach-ins, books and articles, speeches, and marches. Others engaged in civil disobedience: They marched on the Oakland Army Terminal (where soldiers shipped out to Vietnam), burned their draft cards and refused to participate when drafted, used their arrests to challenge the war in court, and occupied campus buildings.¹²²

The country was deeply divided over the Vietnam War and the protests it sparked. Anti-war protesters were often caricatured as “dirty hippies”—naïve, spoiled, immoral, or uninformed young people.¹²³ Protests held during this time period were often met with a strong police or military presence, leading to allegations of excessive use of force against protesters. One infamous instance was the 1968 Democratic National Convention in Chicago, during which the police responded to isolated clashes with protesters with overwhelming force, including tear gas and physical assaults on protesters and journalists, which an independent commission investigating the incidents dubbed a “police riot.”¹²⁴ Another was the 1970

¹¹⁷ Rev. Dr. Martin Luther King, Jr., *The Other America* (speech delivered at Grosse Pointe High School, Michigan), Mar. 14, 1968, available at <http://www.gphistorical.org/mlk/mlkspeech/mlk-gp-speech.pdf>; Ann Heppermann and Kara Oehler, *This Weekend in 1968: The Legacy of Resurrection City*, AMERICAN PUBLIC MEDIA (May 10, 2008), http://weekendamerica.publicradio.org/display/web/2008/05/08/1968_resurrection.

¹¹⁸ THE LAST CRUSADE, *supra* note 111, at 113.

¹¹⁹ Kathy Lohr, *Poor People’s Campaign: A Dream Unfulfilled*, NAT’L PUBLIC RADIO (June 19, 2008), <http://www.npr.org/templates/story/story.php?storyId=91626373>.

¹²⁰ *The Johnson Administration’s Response to Anti-Vietnam War Activities Part 2: White House Central Files*, in RESEARCH COLLECTIONS IN AMERICAN POLITICS: MICROFILMS FROM MAJOR ARCHIVAL AND MANUSCRIPT COLLECTIONS (William Leuchtenburg, ed.) at xi, http://www.lexisnexis.com/documents/academic/upa_cis/101121_JohnsonAdminAnti-VietWarActPt2.pdf [“The PPC was met with large opposition, and President Johnson was bombarded with letters and telegrams requesting that the administration prevent the PPC from camping and demonstrating on the National Mall. The arguments included that the demonstrations would desecrate national landmarks, safety and health would be compromised...his decision not to block the demonstrations rested on the freedoms of speech and assembly.”]

¹²¹ THE LAST CRUSADE, *supra* note 111, at 136-138 (“The entire [eviction] operation took only about 90 minutes, with no violence on either side. Abernathy led a column of about 250 marchers out of the camp to Capitol Hill before the police evacuation deadline.” *Id.* at 137).

¹²² *Antiwar Escalations*, in PATRIOTS: THE VIETNAM WAR REMEMBERED FROM ALL SIDES 262-64 (Christian G. Appy ed., 2003) [hereinafter PATRIOTS]; TOM WOLFE, THE ELECTRIC KOOL-AID ACID TEST 216-26 (1968), reprinted in REPORTING VIETNAM PART ONE: AMERICAN JOURNALISM 1959-1969, at 198 (Library of Am. 1998); see generally STEVEN E. BARKAN, PROTESTERS ON TRIAL: CRIMINAL JUSTICE IN THE SOUTHERN CIVIL RIGHTS AND VIETNAM ANTIWAR MOVEMENTS 87-148 (1985) [hereinafter PROTESTERS ON TRIAL].

¹²³ See, e.g., PROTESTERS ON TRIAL, *supra* note 122, at 102 (a juror in the Chicago Eight trial said afterwards that “the defendants should be convicted because of their appearance, their language, and their life style”); Chalmers Johnson, *The Campus was Turning into a Celebration of Maoism*, in PATRIOTS, *supra* note 122, at 422-23.

¹²⁴ See generally DAVID FARBER, CHICAGO ’68 (1988); RIGHTS IN CONFLICT: CONVENTION WEEK IN CHICAGO, AUGUST 25-29, 1968, A REPORT SUBMITTED BY DANIEL WALKER, DIRECTOR OF THE CHICAGO STUDY TEAM, TO THE NATIONAL COMMISSION ON THE CAUSES AND PREVENTION OF VIOLENCE (1968) (The summary prefacing the report stated that while police experienced provocation from some protesters, they responded with “unrestrained and indiscriminate

shootings of unarmed college students by the National Guard at Kent State University in Ohio, which killed four and wounded nine.

“Between reform and unrest.” The founding citizens of the United States considered the right of assembly to be fundamental and universally accepted.¹²⁵ U.S. Supreme Court decisions and U.S. government officials consistently invoke the right to freedom of assembly as a fundamental component of democracy.¹²⁶ President Lincoln viewed the right of assembly as a key part of “the Constitutional substitute for revolution.”¹²⁷ President Hoover declared the right of peaceable assembly to be among “the principles which distinguish our civilization...the invisible sentinels which guard the door of every home from invasion of coercion, of intimidation and fear.”¹²⁸ Supreme Court Chief Justice Hughes characterized the right of assembly as “a right cognate to those of free speech and free press and is equally fundamental.”¹²⁹ The U.S. State Department, in the introduction to its 2011 global human rights report, praised the wave of popular uprisings seen around the world and urged governments to respect the will of their people. The report notes:

In 2011 we saw too many governments crack down in the name of restoring order when their citizens demanded universal human rights and a voice in how they were governed. These acts of repression triggered more confrontation, more chaos, and ultimately greater instability. The events of the year showed that the real choice is not between stability and security; it is between reform and unrest.¹³⁰

police violence...often inflicted upon persons who had broken no law, disobeyed no order, made no threat. These included peaceful demonstrators, onlookers, and large numbers of residents who were simply passing through, or happened to live in, the areas where confrontations were occurring.”). Summary reprinted at Federal Judicial Center, *Historical Documents: Walker Report Summary*, http://www.fjc.gov/history/home.nsf/page/tu_chicago7_doc_13.html.

¹²⁵ When the Bill of Rights was being debated at the first U.S. Congress, the right of assembly “was considered so basic that Representative Theodore Sedgwick of Massachusetts found including it ‘derogatory to the dignity of the House to descend to such minutiae’ and wanted to strike the phrase from the proposed bill. Others, who foresaw the threat of governmental suppression, defeated his motion.” Lumsden, *supra* note 106, at 197. Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark.

¹²⁶ Legal scholars John D. Inazu and Tabatha Abu El-Haj have both published historical analyses of the important role played by public assemblies throughout U.S. history. Inazu, *supra* note 106; *see also* JOHN D. INAZU, LIBERTY’S REFUGE (2012). Tabatha Abu El-Haj, *The Neglected Right of Assembly*, 56 UCLA L. REV. 543 (2009).

¹²⁷ Inazu, *supra* note 106, at 566.

¹²⁸ *Hoover’s Warning of the Perils to Liberty*, N. Y. TIMES (Sept. 18, 1935), at 10. Note also the general admiration expressed for Henry David Thoreau’s essay, *Civil Disobedience*, published in 1849.

¹²⁹ *De Jonge v. Oregon*, 299 U.S. 353, 364 (1937); *see also* *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J., concurring).

¹³⁰ Michael Posner, *Introduction*, in U.S. STATE DEPARTMENT, COUNTRY REPORTS ON HUMAN RIGHTS PRACTICES FOR 2011, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm#wrapper>.

Chapter Two: Policing: Background, Context, Guidelines

This chapter provides background and context for policing generally. The complex issues only briefly outlined here are intended to provide a context for this report's discussion of policing strategies used during Occupy Wall Street activities.

Section One briefly addresses major areas of policing concern in the United States, describing concerns related to race and the criminal justice system, the surveillance of Muslim communities, and the effective criminalization of homelessness. Section Two describes common styles, strategies, and tactics used specifically in protest policing. Section Three explains available U.S. policing guidelines and use of force rules, particularly as relevant to protest policing.

1. Major U.S. Policing Issues: Policing of Racial and Religious Minorities and the Homeless

Police abuse of protest rights must be considered in context, and not isolated from broader and long-existing concerns about other policing practices in many U.S. cities. For decades, police treatment of communities of color, Muslim minorities, and the poor or homeless, have drawn strong criticism. In New York City, in particular, the NYPD has recently come under increasing fire for a "stop-and-frisk" program disproportionately targeting minority communities and the widespread surveillance of Muslims.¹³¹

Policing concerns not related to protest are outlined here to provide broader context for both concerning police practices and the social issues motivating some of the protesters.¹³² In doing so, this section also serves to highlight the urgent need for police reform broadly, outside the context of protest policing, to improve policing practices for all, and ensure accountability for violations. The concrete recommendations for reform presented at the end of this report should be seen as part of a broader effort by a wide range of groups and communities to reform laws and practices that undermine respect for civil liberties and human rights.

Race and the criminal justice system. The U.S. criminal justice system disproportionately targets people of color.¹³³ Drug and crime-fighting strategies have involved police practices that rely extensively on the racial profiling of African-American and

¹³¹ Michael Grynbaum, *Public Advocate to Call for Audit of Stop-and-Frisk Tactic*, N.Y. TIMES (May 8, 2012), <http://www.nytimes.com/2012/05/09/nyregion/new-york-public-advocate-to-call-for-an-audit-of-police-stop-and-frisk-tactic.html>; Al Baker, *Judge Grants Class-Action Status to Stop-and-Frisk Suit*, N.Y. TIMES (May 16, 2012), <http://cityroom.blogs.nytimes.com/2012/05/16/judge-allows-class-action-status-in-stop-and-frisk-lawsuit/>.

¹³² This point was stressed by many of those interviewed for this report. See, e.g., *NLG-NYC Mass Defense Coordination Committee Condemns NYPD Violence*, NATIONAL LAWYERS GUILD-NEW YORK CITY CHAPTER (Mar. 19, 2012), <http://nlgny.org/2012/03/19/nlg-nyc-mass-defense-coordination-committee-condemns-nypd-violence/>.

Interview with Paula Segal (Lawyer) (2012) (noting that the kinds of police abuses seen at Occupy protests occur frequently against, for example, the homeless and residents of the Bronx); Interview with protester (OOO33) (2012) (noting that with the Occupy protests, lots of white people are now being faced with abusive policing for the first time – it is a "huge wake-up call for what people of color have been going through").

¹³³ The disproportionate targeting of minorities has been true since the days of slavery, when slave patrols, slave codes, and fugitive slave acts utilized the criminal justice system as a means of enforcing slavery. See NEIL WEBSDALE, *POLICING THE POOR: FROM SLAVE PLANTATION TO PUBLIC HOUSING* 16-22 (2001). After the Civil War, Jim Crow laws, lynching, and other forms of racial violence were used to maintain white supremacy, with the acceptance and, at times, active participation of the police and the judiciary in many areas of the country. See *id.* at 22-23; see also *id.* at 205 (noting that during the Jim Crow period, "If authorities found blacks guilty of minor offenses such as vagrancy, drunkenness, or petty larceny, they imposed substantial fines. Unable to pay these fines, blacks faced jail time."). See also KATHERYN RUSSELL-BROWN, *THE COLOR OF CRIME* 35-52, 63 (2d ed. 2009).

Latino individuals.¹³⁴ There is a long and well-documented history of excessive use of police force against minority suspects, including brutal beatings and killings.¹³⁵ Anti-drug laws impose harsh prison sentences for relatively minor infractions, and because drug laws are primarily enforced in minority communities, the end result is a system of mass incarceration that is overwhelmingly populated by African-Americans.¹³⁶ Scholars studying race and the U.S. criminal justice system argue that the system permanently brands large numbers of people of color as criminals, a status that bars them from accessing government-funded food and housing assistance, strips them of voting rights, and forecloses most job opportunities.¹³⁷

Surveillance in Muslim communities. Muslim communities in the United States, particularly after September 11, 2001, have also been subjected to abusive and discriminatory policing. Beginning in August 2011, the Associated Press (AP) published a series of articles detailing an extensive NYPD surveillance program monitoring “locations of concern” in Connecticut, New Jersey, and New York, including Muslim student organizations, mosques, and businesses.¹³⁸ The AP’s investigation found that “police subjected entire neighborhoods to surveillance and scrutiny, often because of the ethnicity of the residents, not because of any accusations of crimes.”¹³⁹ Money from White House grants intended to be used to fight drug crimes was reportedly used to help fund the NYPD’s surveillance program.¹⁴⁰ The AP also obtained documents indicating that the NYPD is monitoring liberal activists and political groups, including “groups opposed to U.S. immigration policy, labor laws and racial profiling.”¹⁴¹

Criminalization of homelessness. Over the past 20 years, cities across the United States have passed a series of laws that effectively criminalize homelessness.¹⁴² These laws vary by city, but many involve fines and/or criminal penalties for sleeping, eating, sitting, or panhandling in public spaces. The homeless are also subject to the selective enforcement of other supposedly neutral laws, including laws against loitering, disorderly conduct laws, and laws prohibiting open containers.¹⁴³ If a homeless person is ticketed for violating one of these

¹³⁴ See, e.g., AMERICAN CIVIL LIBERTIES UNION, THE PERSISTENCE OF RACIAL AND ETHNIC PROFILING IN THE UNITED STATES: A FOLLOW-UP REPORT TO THE U.N. COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION (June 2009), http://www.aclu.org/files/pdfs/humanrights/cerd_finalreport.pdf; HUMAN RIGHTS WATCH, TARGETING BLACKS: DRUG LAW ENFORCEMENT AND RACE IN THE UNITED STATES (2008), www.hrw.org/sites/default/files/reports/us0508_1.pdf; AARTI KOHLI, PETER MARKOWITZ AND LISA CHAVEZ, SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS (Warren Institute on Law and Social Policy Oct. 2011), http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf; Marc Lacey, *U.S. Finds Pervasive Bias Against Latinos by Arizona Sheriff*, N.Y. TIMES (Dec. 15, 2011), <http://www.nytimes.com/2011/12/16/us/arizona-sheriffs-office-unfairly-targeted-latinos-justice-department-says.html?pagewanted=all>.

¹³⁵ Michael Ross, *The Epidemic of Police Brutality*, THE ROOT (Dec. 26, 2011 12:01 AM), <http://www.theroot.com/views/epidemic-excessive-force-police>; Daniel Denvir, *The Elusiveness of Police Accountability*, ATLANTIC CITIES (Apr. 2, 2012), <http://www.theatlanticcities.com/politics/2012/04/elusiveness-police-accountability/1644/>; NAHAL ZAMANI ET AL., ADVOCATING FOR JUSTICE: CASE STUDIES IN COMBATING DISCRIMINATORY POLICING (Center for Constitutional Rights July 2011).

¹³⁶ MICHAEL TONRY, PUNISHING RACE: A CONTINUING AMERICAN DILEMMA (2011); MICHELLE ALEXANDER, THE NEW JIM CROW: MASS INCARCERATION IN THE AGE OF COLORBLINDNESS (2010).

¹³⁷ ALEXANDER, *supra* note 136; see also TONRY, *supra* note 136.

¹³⁸ See generally AP’s *Probe Into NYPD Intelligence Operations*, ASSOCIATED PRESS, <http://ap.org/Index/AP-In-The-News/NYPD>.

¹³⁹ *Highlights of AP’s Pulitzer Prize-Winning Probe into NYPD Intelligence Operations*, ASSOCIATED PRESS, <http://ap.org/media-center/nypd/investigation>.

¹⁴⁰ Eileen Sullivan, *White House Helps Pay for NYPD Muslim Surveillance*, ASSOCIATED PRESS (Feb. 27, 2012), <http://ap.org/Content/AP-In-The-News/2012/White-House-helps-pay-for-NYPD-Muslim-surveillance>.

¹⁴¹ Adam Goldman and Matt Apuzzo, *Documents: NY Police Infiltrated Liberal Groups*, ASSOCIATED PRESS (Mar. 23, 2012), <http://ap.org/Content/AP-In-The-News/2012/Documents-NY-police-infiltrated-liberal-groups>.

¹⁴² U.S. INTERAGENCY COUNCIL ON HOMELESSNESS, SEARCHING OUT SOLUTIONS: CONSTRUCTIVE ALTERNATIVES TO THE CRIMINALIZATION OF HOMELESSNESS (2012), http://www.usich.gov/issue/alternatives_to_criminalization.

¹⁴³ THE NATIONAL COALITION FOR THE HOMELESS AND THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, HOMES NOT HANDCUFFS: THE CRIMINALIZATION OF HOMELESSNESS IN U.S. CITIES (2009), http://www.nationalhomeless.org/publications/crimreport/crimreport_2009.pdf [hereinafter HOMES NOT HANDCUFFS];

laws, and the ticket remains unpaid (because of inability to pay), a warrant may be issued, and the person may be arrested in the future.¹⁴⁴ Homeless populations are also the targets of sweeps of city areas that are intended to force them to leave, which often result in the seizure or destruction of their property, including personal documents and medication.¹⁴⁵

2. Protest Policing Strategies: An Overview

This section presents a brief overview of scholarly research on the tactics and strategies police departments have used to respond to public demonstrations in recent decades, and the ways in which those strategies have developed and changed over time. This information provides a broader context for understanding the police responses to Occupy Wall Street protests in various U.S. cities.

Scholars have classified U.S. police strategies in response to protests over the past half-century into four major approaches: escalated force, negotiated management, command and control, and strategic incapacitation.¹⁴⁶ These approaches are not mutually exclusive; police may employ tactics from multiple approaches during any particular event. There are similarities between the four strategies, but they differ in terms of the degree of force used against protesters, the level of communication and cooperation sought between police and protesters, and the police response to individuals engaging in civil disobedience.

Escalated force. The 1960s Civil Rights protests and other demonstrations through to the '70s were often met with aggressive and violent police responses, described by scholars as a strategy of "escalated force."¹⁴⁷ In describing the main characteristics of the escalated force approach, scholars generally include the following: limited concern for the protesters' speech and assembly rights; limited tolerance for community disruption; limited communication between police and demonstrators; extensive use of arrests to manage demonstrators; extensive use of force to control demonstrators;¹⁴⁸ and surveillance of protesters, including infiltration and the use of informants.¹⁴⁹

see also THE NATIONAL COALITION FOR THE HOMELESS AND THE NATIONAL LAW CENTER ON HOMELESSNESS & POVERTY, *ILLEGAL TO BE HOMELESS: THE CRIMINALIZATION OF HOMELESSNESS IN THE UNITED STATES* (2004), <http://www.nationalhomeless.org/publications/crimreport2004/report.pdf> [hereinafter *ILLEGAL TO BE HOMELESS* 2004].

¹⁴⁴ *ILLEGAL TO BE HOMELESS* 2004, *supra* note 143, at 7.

¹⁴⁵ *HOMES NOT HANDCUFFS*, *supra* note 143, at 9-10.

¹⁴⁶ These terms were developed by scholars, and are not necessarily used by police departments. While the first two approaches discussed (escalated force and negotiated management) are fairly widely agreed upon by scholars, there is much more debate as to the later approaches of command and control (and its sub-approach, called the Miami Model) and strategic incapacitation. See, e.g., Peter J. DeBartolo, Jr., *Protest Policing: An Analysis of Discourse, Dissent, and Redefinition* 43 (2008) (unpublished M.A. thesis, Central European University) (on file with author) ("The existing theories [like command and control and strategic incapacitation] do not adequately take into account the recent trends and transformations that have occurred in the political and security fields . . . [n]or do they carefully enough examine the particularities of post-9/11 New York City or the Department's discourse.").

¹⁴⁷ The term "escalated force" was introduced by the sociologist Clark MacPhail, and has gained traction among other sociologists writing in this field. See Clark MacPhail et al., *Policing Protest in the United States: 1960-1995*, in *POLICING PROTEST: THE CONTROL OF MASS DEMONSTRATIONS IN WESTERN DEMOCRACIES* 50 (Donatella della Porta & Herbert Reiter eds., 1998) (relying on contemporary social scholarship as well as policies and procedures developed by municipal, state, and federal policing agencies); Patrick F. Gillham, *Securitizing America: Strategic Incapacitation and the Policing of Protest Since the 11 September 2001 Terrorist Attacks*, 5 *SOC. COMPASS* 636 (2011). The "escalated force" terminology is not generally used by police, but the aggressive police responses seen in the '60s are acknowledged by commentators within the policing community. See, e.g., John G. Peters, Jr. & Michael A. Brave, *Force Continuums: Are They Still Needed?*, 22 *POL. & SEC. NEWS* 1, 1 (Jan./Feb. 2006) ("Many police officers and administrators can recall during the 1960s and 1970s when . . . [o]fficers often carried blackjacks or saps; used destructive choke holds; and simply kicked butt to get the job done, often with little thought about legal or administrative sanctions.").

¹⁴⁸ Clark MacPhail & John D. McCarthy, *Protest Mobilization, Protest Repression, and Their Interaction*, in *REPRESSION AND MOBILIZATION* 3, 53 (Christian Davenport et al. eds., 2005); Sarah A. Soule & Christian Davenport,

In the escalated force model, protests are viewed as a threat to public order, and are met with a swift and harsh response, often involving tear gas, horses, police dogs, and water hoses, among other forms of harassment.¹⁵⁰ The approach often includes mass unprovoked arrests, and police respond to protester disobedience or force with greater, overwhelming force.¹⁵¹ Communication with protesters is “undercover and exploitative,” and is intended to gain information on how to undermine a protest rather than understand or effectively communicate with it.¹⁵²

Negotiated management or “meet and greet.” Escalated force was a public relations disaster for many police departments: The strategy led to numerous deaths, injuries, and property damage.¹⁵³ As a result, political officials and the public put pressure on police agencies to change their practices,¹⁵⁴ and in the 1980s and ’90s many police departments shifted to an approach referred to as “negotiated management.”¹⁵⁵ Washington, D.C. Metropolitan Police and U.S. Park Police were early adopters, and the style spread to other police departments around the country.¹⁵⁶

Negotiated management features active cooperation between police and protesters, with the aim of negotiating to eliminate conflicts that could potentially lead to the use of force. The approach views communication as necessary to protect First Amendment rights and minimize conflict.¹⁵⁷

The negotiated management approach was widespread in the United States until the World Trade Organization (WTO) protests in 1999 in Seattle, Washington.¹⁵⁸ While the majority of protesters in Seattle were peaceful, some individuals engaged in violence.¹⁵⁹ Police responded with forceful crowd dispersal and mass arrests, even against peaceful

Velvet Glove, Iron Fist, or Even Hand? Protest Policing in the United States, 1960-1990, 14 MOBILIZATION 1, 3 (2009).

¹⁴⁹ Gillham, *supra* note 147, at 643 (“Under escalated force police utilized surveillance, often by means of infiltration or informants, to gather intelligence that identified influential or radical individuals and groups and their organizational affiliations. They also surreptitiously compiled data on influential activists regarding personal friendships and extra-marital affairs. Less detailed information such as current address, organizational memberships, and events attended was collected on larger populations of less vital activists and movement sympathizers.”)

¹⁵⁰ Soule & Davenport, *supra* note 148, at 1; Gillham, *supra* note 147, at 2.

¹⁵¹ Gillham, *supra* note 147, at 643. Arthur Doyle, a retired NYPD Lieutenant, writes the following about the protests of the 1960s based on his experiences on the force: “They almost always followed the same sort of scenario: unnecessary force, indiscriminate use of the nightstick, unnecessary brutality. The goal was supposed to be to stop the riot or the disturbance and to arrest those who were actively participating. Not to wantonly corral people, or corner them. When you cornered people, you invariably had a group of cops on one side and angry people on the other who defended themselves. At those times, it looked as if it was just one mob chasing another mob.” Lieutenant Arthur Doyle, *From the Inside Looking Out: Twenty-Nine Years in the New York Police Department*, in POLICE BRUTALITY 171, 175 (Jill Nelson ed., 2000).

¹⁵² McPhail & McCarthy, *supra* note 148, at 53.

¹⁵³ Gillham, *supra* note 147, at 637.

¹⁵⁴ *Id.*

¹⁵⁵ Alex Vitale, *From Escalated Force to Disruption Control: The Evolution of Protest Policing* (unpublished) (“Following numerous reports, civil law suits, and media coverage criticizing the violence that often resulted from [the escalated force] approach, many departments developed a doctrine of ‘Negotiated Management’.”); *see also* Soule & Davenport, *supra* note 148, at 1-3 (discussing decisions such as *Brandenburg v. Ohio* and *Watts v. United States* that led to police revisions on how they approached dissent).

¹⁵⁶ Gillham, *supra* note 147, at 638.

¹⁵⁷ *See e.g.* Jennifer Earl, *A Lawyer’s Guide to the Repression Literature*, 67 NAT’L L. GUILD REV. 3, 12-13 (2010).

¹⁵⁸ John Noakes & Patrick F. Gillham, *Police and Protester Innovation Since Seattle*, 12 MOBILIZATION 335, 335 (2007) (referring to the Seattle protests as a “Pearl Harbor,” or a major precipitating event).

¹⁵⁹ Howard M. Wasserman, *Orwell’s Vision: Video and the Future of Civil Rights Enforcement*, 68 Md. L. Rev. 600, 605 (2009); Noakes & Gillham, *supra* note 158, at 335.

demonstrators.¹⁶⁰ The dominant images that remain after these protests are of tear gas and smashed windows.¹⁶¹

Seattle “marked the beginning of the newest chapter of increasingly harsh police responses to protesters.”¹⁶² The policing community acknowledged that it was a “defining moment in how local law enforcement manages mass demonstrations.”¹⁶³ Police forces began to invest millions of dollars in riot gear and sent representatives to protest-control seminars sponsored by the National Association of the Chiefs of Police and the U.S. Department of Justice.¹⁶⁴

However, Seattle’s police officials view their response to the 1999 WTO protests as a cautionary tale, not a model to be reproduced. Then-Chief of Police Norm Stamper called the response the “worst decision of my 34-year career,” and has advocated for a protest policing approach that closely resembles the negotiated management strategy, recommending “a more open and more direct approach, negotiating with demonstration leaders to the extent that such leaders are identifiable and generally working to collaborate on both the tactics and the policing of those tactics, to the extent that that’s possible.”¹⁶⁵

Seattle’s current Assistant Chief of Police describes his department’s policing strategy after the WTO protests as:

[A] style that incorporates a number of options and action, where officers are in different uniforms, walking around and being part of the crowd, or in protective clothing. It’s harder to attack a police officer when your buddies are standing right next to them. And we are doing a lot more community outreach prior to planned events.¹⁶⁶

The police force of Vancouver, Canada, which polices about 300 protests each year, has developed a strategy it calls “meet and greet” to handle protests.¹⁶⁷ This strategy adopts many of the elements of negotiated management—engagement, communication, and reinforcement:

[W]e started developing what we call our “meet and greet” strategy. Instead of using riot officers in Darth Vader outfits, we aim to be totally engaged with the crowd. We were out there high-fiving, shaking hands, asking people how they’re doing, and telling the crowd that “We are here to keep you safe.” We have found that this creates a psychological bonding with the crowd that pays real dividends. It is very difficult to fight the police if you’ve just been friendly with some individual officers.¹⁶⁸

The Vancouver Police Department used this strategy to police protests during the 2010 Winter Olympics and considered it a tremendous success, noting that after 17 days of crowd-

¹⁶⁰ Alicia A. D’Addario, *Policing Protest: Protecting Dissent and Preventing Violence Through First and Fourth Amendment Law*, 31 N.Y.U. REV. L. & SOC. CHANGE 97, 97 (2006).

¹⁶¹ *Id.*

¹⁶² *Id.*

¹⁶³ Tony Narr et al., POLICE MANAGEMENT OF MASS DEMONSTRATIONS: IDENTIFYING ISSUES AND SUCCESSFUL APPROACHES 1 (2006).

¹⁶⁴ Noakes & Gillham, *supra* note 158, at 335.

¹⁶⁵ Neal Conan, *Shifts In Police Tactics To Handle Crowds*, NPR (Nov. 29, 2011), <http://www.npr.org/2011/11/29/142903638/shifts-in-police-tactics-to-handle-crowds>.

¹⁶⁶ Seattle Assistant Chief Paul McDonagh, *Today’s Approach Is Far Different from 1999*, in MANAGING MAJOR EVENTS 5 (2011), available at http://policeforum.org/library/critical-issues-in-policing-series/MajorEvents_full.pdf.

¹⁶⁷ Vancouver Deputy Chief Doug LePard, *A Policy of Tolerance and Police Restraint Won Over Crowds at the 2010 Winter Olympics*, in MANAGING MAJOR EVENTS 7 (2011), available at http://policeforum.org/library/critical-issues-in-policing-series/MajorEvents_full.pdf.

¹⁶⁸ *Id.*

control operations, it received only one formal complaint (unrelated to crowd control), and that no lawsuits were filed after the event.¹⁶⁹

UN Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns, noted in his 2011 report to the UN Human Rights Council that:

While the negotiated management approach has, over the last few decades, prevailed in much of the United States and Europe, it is important to note that it is not universally accepted in this area. In fact, there are indicators that less tolerant approaches, sometimes described as paramilitary policing, may be coming back into vogue, particularly in respect of, but not confined to, transnational anti-globalization protests. Governments may also feel that the floodgates have been opened by the events in Tunisia and other countries, and take a hard line on protest.¹⁷⁰

Indeed, two new approaches to protest policing have been used with increasing frequency in the United States in recent years, both of them involving more aggressive techniques than those in negotiated management.

Command and control and the “Miami Model.” In the years following the Seattle WTO protests, responses to protests in various U.S. cities have indicated a shift away from “negotiated management” practices in favor of tactics designed to establish firm police control over protesters. This approach, dubbed “command and control” by policing experts, emphasizes establishing preemptive police control over demonstrators, while attempting to avoid the negative publicity that can be generated by massive shows of force, such as those seen in the WTO protests.¹⁷¹

Command and control differs from escalated force in that it uses a more strategic, cautionary, and control-oriented approach to deploying force. This often involves extensive advanced planning. As explained by sociology professor and protest policing expert, Alex Vitale, command and control also significantly differs from negotiated management:

[Command and control] is distinguished from negotiated management because it sets clear and strict guidelines on acceptable behavior with very little negotiation with demonstration organizers. It is also inflexible to changing circumstance during the course of demonstration, and will frequently rely on high levels of confrontation and force in relation to even minor violations of the rules established for the demonstration. This does not represent a return to escalated force because it attempts to avoid the use of force through planning and careful management of the protest. When this fails, however, force is used, but only in the service of re-establishing control over the demonstration.¹⁷²

Other tactics considered part of a “command and control” approach include a heavy police response (in terms of the number of officers deployed, the use of riot gear, the proximity of police to protesters); surrounding and subdividing protesters; the use of barricades to block

¹⁶⁹ See *id.* at 8 (noting also that the police’s constant reinforcement of the message that, “We’re your friends. We are here to protect your right to protest. We will stand in harm’s way to protect your right to protest” established a positive relationship between police and protesters, and peaceful protesters cheered on the police when they made arrests of violent individuals)

¹⁷⁰ Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, Christof Heyns, ¶ 118, Human Rights Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns).

¹⁷¹ Alex S. Vitale, *From Negotiated Management to Command and Control: How the New York Police Department Polices Protests*, 15 POL. & SOC. 287 (2005).

¹⁷² *Id.*

or divert protester access to an area; arresting protesters for minor legal violations that are otherwise typically not enforced; and/or using force against protesters engaged in minor legal violations.¹⁷³

Vitale identifies a variation of the command and control approach, which he refers to as the “Miami Model,” in reference to the Miami Police Department’s response to the Free Trade Area of the Americas meeting protests in 2003.¹⁷⁴ The Miami Model shares command and control’s basic philosophy of controlling protest activity, but involves more severe police responses, including more prevalent use of force (with less-lethal weapons), more frequent use of arrests (including mass arrests of protesters), the creation of “no protest” zones, and the use of surveillance to obtain information regarding protest activity.¹⁷⁵ Vitale suggests that this intensified version of the command and control strategy is most often used against groups that do not apply for permits or engage in forms of civil disobedience.¹⁷⁶

Strategic incapacitation. Another scholar of policing strategies, Patrick Gillham, posits an alternative theory to “command and control” to explain post-9/11 trends in policing. Gillham argues that in recent years, New York City has witnessed a shift from “reactive” policing to “proactive” policing under Commissioner Raymond Kelly’s “Safe Streets, Safe City” initiative.¹⁷⁷ This proactive approach means that police adopt measures in advance to minimize the potential impact and size of a protest, which might include preparing a large police force to arrive at a scheduled protest location before the event begins, or regulating permits for the protest in a manner designed to redirect the protest. Gillham refers to this shift toward proactive enforcement as “strategic incapacitation.”¹⁷⁸

As theorized by Gillham, strategic incapacitation prioritizes the preservation of security, including the neutralization of any threats to that security.¹⁷⁹ The approach seeks to regulate space and restrict access to protest areas.¹⁸⁰ During protests, police distinguish between classes of protesters, using distinct tactics against “bad” (or “transgressive”) protesters.¹⁸¹ Under Gillham’s model, police may define “transgressive” broadly enough to include individuals who are organizers or figureheads for a movement,¹⁸² and the methods police have used to identify “transgressive” protesters have raised concerns of profiling of individuals.¹⁸³ Tactics used to temporarily incapacitate individuals viewed as “transgressive”

¹⁷³ See, e.g., Alex S. Vitale, *The Command and Control and Miami Models at the 2004 Republican National Convention: New Forms of Policing Protests*, 12 MOBILIZATION 403, 405 (2007). Vitale argues that this is consistent with New York City’s adoption of a “broken windows” theory of policing that punishes even minor violations of the law, under the rationale that permissive reactions to minor violations leads to major violations. This falls under a larger umbrella of a “zero-tolerance” policy in policing. Jane Donoghue, ANTI-SOCIAL BEHAVIOR ORDERS 35 (2010). The policy began in the mid-1980s but became a cornerstone of Mayor Rudy Giuliani’s crime policy in the ’90s.

¹⁷⁴ Vitale, *supra* note 173, at 406. Chief John Timoney of the Miami Police Department also acknowledged the notorious nature of Miami protests and riots, noting that Miami has had more riots than any other city in America over the past 25-30 years. International Law Enforcement Forum, REPORT ON THE SIXTH INTERNATIONAL LAW ENFORCEMENT FORUM FOR MINIMAL FORCE OPTIONS AND LESS-LETHAL TECHNOLOGIES 30 (2008), available at http://nldt2.arl.psu.edu/documents/2008_ILEF_Report_FINAL.pdf. These riots, he said, were premised on police violence and police shooting of individuals.

¹⁷⁵ Vitale, *supra* note 173, at 406.

¹⁷⁶ *Id.*

¹⁷⁷ Gillham, *supra* note 147, at 640.

¹⁷⁸ Gillham, *supra* note 147, at 640.

¹⁷⁹ *Id.*

¹⁸⁰ Noakes & Gillham, *supra* note 158, at 336.

¹⁸¹ Gillham, *supra* note 147, at 642.

¹⁸² *Id.*

¹⁸³ In 2004 the City Council Committee on the Judiciary in Washington, D.C. released the results of an investigation into the Metropolitan Police Department’s handling of protests from 2000-2002. The Committee’s report referenced testimony from then-Assistant Chief Broadbent in which he stated that protesters wearing bandannas or masks to cover their faces were considered to have the intention of engaging in criminal behavior. The Committee commented, “There are two points here. Demonstrators have had cause in the past to fear police use of pepper spray and will

include the establishment of no-protest zones, the increased use of less-lethal weapons, the use of barricades and kettling techniques, the strategic use of arrests, and surveillance and infiltration.¹⁸⁴ Negotiated management tactics may still be employed with fully compliant protesters, but not against protesters unwilling to negotiate rights away.¹⁸⁵

The strategic incapacitation strategy may be distinguished from command and control in that the former relies more on targeting specific protesters or groups, while the latter seeks to control and debilitate the protest as a whole, with less attention paid to identifying particular protesters as targets for action.

3. U.S. Policing Guidelines and Use of Force Rules

Use of force is one of the most controversial topics in the national conversation on policing. The International Association of Chiefs of Police defines force as “that amount of effort required by police to compel compliance from an unwilling subject.” Excessive force is defined as “the application of an amount and/or frequency of force greater than that required to compel compliance from a willing or unwilling subject.”¹⁸⁶ Police departments have developed policies to guide officers on when force is appropriate and how to employ certain types of force. Many of these policies are not publicly available, and those that are published are often brief.

This section describes policies from several major U.S. cities and explores the similarities and differences of protesting policies across police departments.¹⁸⁷ It is based on a review of the available policing policies of seven U.S. cities: Boston, Denver, New York City, Oakland, San Francisco, Seattle, and Washington, D.C. The same policies are not available in all of the cities under review. Further, not all policies are readily accessible and some are only accessible as a result of litigation.

Although a detailed critique of these policies is beyond the scope of this report, it is worth noting that numerous elements of U.S. law and policy on use of force and the policing of public demonstrations fall short of requirements under international standards relating to issues such as exceptionality, absolute necessity, and proportionality.¹⁸⁸ Furthermore, the problem of excessive use of force by U.S. police has drawn the attention of UN human rights bodies.¹⁸⁹

explain that they are advised, and advise others, to wear or carry scarves and other apparel to cover the face if necessary to avoid inhaling chemicals. Second and more significant: basing a police decision to arrest or detain merely on the appearance of one or more individuals represents a form of profiling and runs counter to departmental policy as well as case law.” City Council, Committee on the Judiciary, Report on Investigation of the Metropolitan Police Department's Policy and Practice in Handling Demonstrations in the District of Columbia (Mar. 11, 2004), available at <http://www.dwatch.com/police/040311.htm>.

¹⁸⁴ Gillham, *supra* note 147, at 642.

¹⁸⁵ Noakes & Gillham, *supra* note 158, at 336.

¹⁸⁶ INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, POLICE USE OF FORCE IN AMERICA 2001, at 1 (2001), <http://www.theiacp.org/Portals/0/pdfs/Publications/2001useofforce.pdf>.

¹⁸⁷ Because not all policies are available for review, and because some departments only make some of their policies available to the public, this section should not be considered a definitive guide to U.S. police use of force rules.

¹⁸⁸ See *infra*, Part I, Ch. 3, “International Law.”

¹⁸⁹ See, e.g., Comm. against Torture, Conclusions and Recommendations of the Comm. against Torture: United States of America, ¶¶ 35, 37, 42, U.N. Doc. CAT/C/USA/CO/2 (2006); Comm. against Torture, Conclusions and Recommendations of the Comm. against Torture: United States of America, ¶¶ 179-80, U.N. Doc. A/55/44 (2000); Concluding observations of the Comm. on the Elimination of Racial Discrimination: United States of America, ¶ 25, U.N. Doc. CERD/C/USA/CO/6 (2008); Concluding observations of the Comm. on the Elimination of Racial Discrimination: United States of America, ¶ 394, U.N. Doc. A/56/18 (2001); see also U.S. HUMAN RIGHTS NETWORK, IN THE SHADOWS OF THE WAR ON TERROR: PERSISTENT POLICE BRUTALITY AND ABUSE IN THE UNITED STATES: A REPORT PREPARED FOR THE UNITED NATIONS COMMITTEE AGAINST TORTURE ON THE OCCASION OF ITS REVIEW OF THE UNITED STATES OF AMERICA'S SECOND PERIODIC REPORT TO THE COMMITTEE AGAINST TORTURE (2006), available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN15.pdf> (a similar version of this document was later

U.S. Supreme Court standards. The legal foundation of police departments' use of force policies is built on the Supreme Court's judicial standards on the use of force. Courts evaluate claims of excessive use of force by police under two main frameworks, depending on whether the person against whom force was used was "seized" at the time force was used.¹⁹⁰ Seizure, as defined by the Court, occurs when a person has been physically touched by a police officer, or when a person has submitted to an officer's nonphysical show of authority.¹⁹¹ Where a person has been seized, the Fourth Amendment's protections against unreasonable search and seizure are triggered.¹⁹²

In seizure cases, courts examine a claim that excessive force has been used under the Fourth Amendment's "objective reasonableness" standard.¹⁹³ Courts look at the totality of the circumstances to determine whether the use of force was reasonable and consider the particular facts facing the officer in each case, including the severity of the crime the officer believed the suspect to be committing, whether the suspect presented an immediate threat to the officer or the public, and whether the suspect was actively resisting arrest or attempting to escape.¹⁹⁴ The officer's intentions—good or bad—are irrelevant to determining whether the use of force was reasonable.¹⁹⁵ Courts also consider the governmental interests at stake and weigh them against the intrusion on the individual's interests.¹⁹⁶

If a person is not considered seized at the time force was used, the standard used to evaluate whether the use of force was excessive is if it "shocks the conscience."¹⁹⁷ Among other requirements, the officer must be found to have subjectively intended to harm the individual in order for the use of force to qualify as shocking the conscience.¹⁹⁸

Police use of force during public demonstrations may implicate both of these standards. The use of force during an arrest (of an individual or an entire group of demonstrators) is evaluated under the "objective reasonableness" test; the use of force to disperse a crowd (where no seizure is involved) is evaluated under the "shocks the conscience" test.¹⁹⁹ Courts may evaluate with particular scrutiny the use of force in situations where individuals are

submitted as a shadow report to the U.N. Committee on the Elimination of Racial Discrimination in December 2007, available at <http://www2.ohchr.org/english/bodies/cerd/docs/ngos/usa/USHRN15.pdf>.

¹⁹⁰ There is a separate standard used to evaluate claims of excessive force against prisoners, which implicates the Eighth Amendment. That standard is not discussed here.

¹⁹¹ The two definitions of seizure are articulated in *California v. Hodari D.*, 499 U.S. 621, 625-26 (1991).

¹⁹² U.S. CONST. amend. IV ("The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.")

¹⁹³ *Graham v. Connor*, 490 U.S. 386, 399 (1989); see also *Scott v. United States*, 436 U.S. 128, 137-139 (1978); *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968) (in analyzing the reasonableness of a particular search or seizure, "it is imperative that the facts be judged against an objective standard").

¹⁹⁴ *Graham*, 490 U.S. at 396 ("[T]he question is 'whether the totality of the circumstances justifie[s] a particular sort of . . . seizure.'" (quoting *Tennessee v. Garner*, 471 U.S. 1, 8-9 (1985))).

¹⁹⁵ *Id.* at 397.

¹⁹⁶ *Id.* at 396.

¹⁹⁷ The "shocks the conscience" test is described in *County of Sacramento v. Lewis*, 523 U.S. 833, 846-54 (1998), where there is no seizure, use of force is evaluated on substantive due process grounds under the Fifth and Fourteenth Amendments. The "shocks the conscience" test includes a subjective element: in order for the use of force to shock the conscience, the officer must be found to have subjectively intended to hurt the individual. "[C]onduct intended to injure in some way unjustifiable by any government interest is the sort of official action most likely to rise to the conscience-shocking level." *Id.* at 849.

¹⁹⁸ *Lewis*, 523 U.S. at 852-54.

¹⁹⁹ Legal scholars have noted the difficulties of applying either of these tests to instances of force used against participants in a public demonstration, particularly with respect to the use of force to disperse protesters. See Renee Paradis, *Carpe Demonstratores: Towards a Bright-Line Rule Governing Seizure in Excessive Force Claims Brought by Demonstrators*, 103 COLUM. L. REV. 316 (2003).

exercising their First Amendment rights. The Supreme Court has traditionally shown great concern for police actions that may suppress or chill free speech.²⁰⁰

“Deadly force” refers to any use of force that is likely to result in death or serious bodily injury.²⁰¹ Deadly force may be used only when an officer reasonably believes that a suspect poses an imminent danger of death or serious bodily harm to the officer or another person.²⁰²

Police use of force policies generally. Publicly available policies from police departments commonly reflect the judicial standards explained above. Apart from instructions to officers that the use of force must be reasonable in light of the circumstances and should be the minimum amount of force required in the situation, use of force policies tend not to prescribe the exact type of force an officer must use in a particular instance. Instead, the officer is allowed to use his or her judgment in the moment to decide what is most appropriate.²⁰³

Most police departments employ a “use of force continuum,” in which types of force are loosely ranked in a hierarchy (or on a wheel) from least forceful to most forceful, as a “fluid

²⁰⁰ Alicia D’Addario, *Policing Protest: Protecting Dissent and Preventing Violence Through First and Fourth Amendment Law*, 31 N.Y.U. REV. L. & SOC. CHANGE 97, 112 (2006) (noting the long history of the use of search and seizure as a means of suppressing free expression, and arguing that constitutional requirements for search and seizure must be applied with “scrupulous exactitude” where the First Amendment is implicated (citing *Stanford v. Texas*, 379 U.S. 476, 481-486 (1965); *Marcus v. Search Warrants*, 367 U.S. 717, 724-729 (1961) (referencing the historical use of search and seizure powers to suppress freedom of speech and the press, and noting that “The Bill of Rights was fashioned against the background of knowledge that unrestricted power of search and seizure could also be an instrument for stifling liberty of expression.”)).

²⁰¹ See, e.g., UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, REVIEW OF THE DEPARTMENT OF JUSTICE’S USE OF LESS-LETHAL WEAPONS iii, viii (2009); UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE ATTORNEY GENERAL, COMMENTARY REGARDING THE USE OF DEADLY FORCE IN NON-CUSTODIAL SITUATIONS (1995), <http://www.justice.gov/ag/readingroom/resolution14c.htm>.

²⁰² See *Tennessee v. Garner*, 471 U.S. 1, 11 (1985) (holding that it is only permissible for an officer to use deadly force against a fleeing suspect when the officer has probable cause to believe that the suspect poses a significant threat of death or serious physical injury to the officer or others). The Department of Justice has a use of deadly force policy that applies to all of the law enforcement agencies falling within the Department’s purview. The policy states: “Law enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or another person.” See UNITED STATES DEPARTMENT OF JUSTICE OFFICE OF THE INSPECTOR GENERAL, REVIEW OF THE DEPARTMENT OF JUSTICE’S USE OF LESS-LETHAL WEAPONS iii, viii (2009); COMMENTARY REGARDING THE USE OF DEADLY FORCE IN NON-CUSTODIAL SITUATIONS, *supra* note 201; see also New York City Police Department Patrol Guide 203-12, Deadly Physical Force (2000) [hereinafter NYPD Patrol Guide].

²⁰³ See, e.g., NYPD Patrol Guide 203-11, Use of Force (2000); San Francisco Police Department, General Order: Crowd Control 2 (1994), available at <http://www.sf-police.org/modules/ShowDocument.aspx?documentid=14747> (“When the use of force is justified, the minimum degree of force necessary to accomplish an arrest or dispersal shall be employed. Officers are permitted to use reasonable and necessary force to protect themselves and others from bodily harm, but no more.”); San Francisco Police Department, General Order 5.01, Sec. I.A (“The use of physical force shall be restricted to circumstances authorized by law and to the degree minimally necessary to accomplish a lawful police task.” (quoted in Police Commission of the City and County of San Francisco, Oct. 5, 2005 Meeting Minutes, available at <http://sf-police.org/Modules/ShowDocument.aspx?documentid=22780>)); Boston Police Department, Rules and Procedures, Rule 304 (1994), available at http://www.cityofboston.gov/Images_Documents/rule304_tcm3-9587.pdf [hereinafter BPD Rules and Procedures 1994] (“[N]o rule can offer definitive answers to every situation in which the use of non-lethal force might be appropriate.”); Denver Police Department, Use of Force Policy 105.01; available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>; District of Columbia Metropolitan Police Department, General Order: Use of Force GOC-05-02 (2005), available at <http://www2.justiceonline.org/dcmpd/GOC0502.pdf> (“Reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on the scene in light of the facts and circumstances confronting the officer”); SEATTLE POLICE DEPARTMENT, USE OF FORCE BY SEATTLE POLICE DEPARTMENT OFFICERS 5-6 (2001), available at <http://www.seattle.gov/Police/Publications/useforce/UseofForce.PDF> [hereinafter SPD Report] (“[S]ince no two situations are likely to be the same, there are no ‘cookie cutter’ guidelines for officers to follow. Instead they are expected to use their training, experience, and judgment in applying force.”).

and flexible policy guide” for officers.²⁰⁴ These continuums vary by department, but generally, the lower end of the continuum is an officer’s “command presence”—use of body language and other nonphysical cues to establish authority—and then escalates through verbal commands, particular types of physical contact, use of impact weapons such as batons or chemical irritants, and, finally, the use of deadly force.²⁰⁵ Police officers are required to use the lowest level of force necessary to achieve the goal at stake.²⁰⁶ Use of force policies also generally require medical assistance to be rendered to any suspect who has been injured or who requests such assistance.²⁰⁷

Reporting and investigation requirements. Police department policies generally require officers to follow a standardized reporting procedure for any use of force.²⁰⁸ These reporting requirements apply to the use of force in any situation, including demonstration

²⁰⁴ Ryan Hatch, *Coming Together to Resolve Police Misconduct: The Emergence of Mediation as a New Solution*, 21 OHIO ST. J. DISPUTE RES. 447, 478-79 (2006); Karen Blum and John Ryan, *Recent Developments in the Use of Excessive Force by Law Enforcement*, 24 TOURO L. REV. 569, 582 (2008), (“[P]olice departments all over the country have some kind of force continuum.”); Kenneth Adams, *What We Know About Police Use of Force*, in USE OF FORCE BY POLICE: OVERVIEW OF NATIONAL AND LOCAL DATA, U.S. DEPARTMENT OF JUSTICE vii-viii (1999), available at <http://www.ncjrs.gov/pdffiles1/nij/176330-1.pdf>. For examples of use of force continuums, see *The Use of Force Continuum*, NATIONAL INSTITUTE OF JUSTICE (2009), <http://www.nij.gov/topics/law-enforcement/officer-safety/use-of-force/continuum.htm>; Denver Police Department, Use of Force Policy 105.01(4)(d)(e), available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>; District of Columbia Metropolitan Police Department, General Order: Use of Force GO–RAR–901.07(V)(B) (2002), available at https://go.mpdconline.com/GO/GO_901_07.pdf. The NYPD refers to the “force continuum” in its Patrol Guide, but the continuum itself is not publicly available. See NYPD Patrol Guide Series 212, Interim Order No. 20-1, Use of Conducted Energy Devices (2010); USE OF FORCE BY SEATTLE POLICE DEPARTMENT OFFICERS, *supra* note 203, at 6.

²⁰⁵ Hatch, *supra* note 204, at 479 (“At the first, or lowest level of the typical use of force continuum is the mere presence of an officer, which includes body language, demeanor, and identification of authority. The second level of force involves verbal communication—giving a direct order, questioning, or persuasion—when the individual is argumentative or verbally resistant. The third level of force involves an officer using physical contact, or ‘soft-hands techniques,’ which includes directional contact or escorting an individual. In the fourth level of force, the police officer uses physical control by means of takedown maneuvers, use of pressure points, or other physical defensive tactics to gain compliance of a physically resistive individual. The fifth level of force is classified as serious physical control, whereby the use of impact or intermediate weapons, or both, focused blows or kicks, or chemical irritants are authorized. The sixth, and final, level of force on the use of force continuum is the use of deadly force which encompasses ‘any force that is readily capable of causing death or serious bodily injury.’”).

²⁰⁶ Adams, *supra* note 204, at vii-viii; INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE, PROTECTING CIVIL RIGHTS: A LEADERSHIP GUIDE FOR STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT xiv (2006), <http://www.theiacp.org/LinkClick.aspx?fileticket=2zXynC7wAAU%3d&tabid=392> (recommending that use of force policies “should also directly address alternatives to the use of force. Policies should encourage officers to consider alternative techniques such as verbal judo and containment wherever possible.”).

²⁰⁷ NYPD Patrol Guide 212-95, Use of Pepper Spray Devices (2000); NYPD Patrol Guide 203-11 (requiring that medical assistance be requested immediately if someone “appears to be having difficulty breathing or is otherwise demonstrating life-threatening symptoms”); BPD Rules and Procedures 1994, *supra* note 203, Rule 304, Sec. 6; Denver Police Department, Use of Force Policy 105.02, available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>; Seattle Police Department Policies and Procedures, 6.240—Use of Force (2010), available at http://www.seattle.gov/police/publications/policy/SPD_Manual.pdf [hereinafter SPD Use of Force]; Dist. of Columbia Metro. Police Dep’t, Standard Operating Procedures for Handling First Amendment Assemblies and Mass Demonstrations, L-10, L-12, (2011) [hereinafter DC Standard Operating Procedures].

²⁰⁸ Requirements for what information must be included in the reporting of a use of force incident, what level of supervising officer reviews the report, and who investigates the report vary by department, and use of force policies do not always provide detail on these requirements. See, e.g., Boston Police Department, Rules and Procedures, Rule 303, Sec. 10 (2003), available at http://www.cityofboston.gov/Images_Documents/rule303_tcm3-9585.pdf [hereinafter BPD Rules and Procedures 2003]; BPD Rules and Procedures 1994, *supra* note 203, at Rule 304, Sec. 7; Denver Police Department, Use of Force Policy 105.02, available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>; District of Columbia Metropolitan Police Department, General Order: Use of Force GO–RAR–901.07 (VI) (2002), available at https://go.mpdconline.com/GO/GO_901_07.pdf; District of Columbia Metropolitan Police Department, General Order: Use of Force Investigations GO–RAR–901.08 (2002), available at <http://www2.justiceonline.org/dcmpd/GO90108.pdf>; SPD Use of Force, *supra* note 207, at Sec. XII.

policing.²⁰⁹ Most police departments outline the procedure for investigating uses of force in their policies. In some departments, every instance of use of force is investigated; in others, only the use of force rising to a certain level of seriousness is investigated.²¹⁰ The Washington, D.C. Metropolitan Police has a designated team charged with investigating “all incidents involving the use of force arising from a First Amendment Assembly,” and has published the procedures for these investigations.²¹¹ Police officers in Denver and Washington, D.C. are obligated to report an instance of use of excessive force by a fellow officer to a supervisor.²¹² The NYPD requires police officers to intervene “if the use of force against a subject clearly becomes excessive.”²¹³

Policies on policing public demonstrations. Demonstration policing policies emphasize the importance of protecting First Amendment rights and minimizing police involvement in public demonstrations, while maintaining public safety.²¹⁴ They often underscore the need for minimal use of force against protesters, and appropriate training of police officers on the use of force.²¹⁵

The NYPD’s current demonstration policing policies are not public. The New York Civil Liberties Union has obtained NYPD documents through a successful Freedom of Information Law request, including a training manual titled *Police Student’s Guide: Maintaining Public Order* (dated July 2004) and materials prepared in advance of the 2004 Republican National Convention, held in New York City.²¹⁶ These documents provide some insight into the

²⁰⁹ Certain departmental policies, such as the Seattle Police Department’s, permit supervising officers to authorize alternative procedures for reporting uses of force in the context of demonstration policing. SPD Use of Force, *supra* note 207, at Sec. XIII. Note, however, that when the D.C. Metropolitan Police Department entirely suspended use of force reporting requirements during demonstrations, the result was a costly lawsuit and the reinstatement of reporting requirements. *See Partnership for Civil Justice Settles Landmark Lawsuit Against D.C. Police*, PARTNERSHIP FOR CIVIL JUSTICE FUND (Nov. 21, 2006), <http://www.justiceonline.org/commentary/partnership-for-civil-justice-settles-landmark-lawsuit.html>.

²¹⁰ NYPD Patrol Guide 212-53, Command Responsibilities When A Person Dies Or Sustains A Serious Injury In Connection With Police Activity (2000); SPD Use of Force, *supra* note 207, at Sec. XII; BPD Rules and Procedures 1994, *supra* note 203, at Rule 304, Sec. 7; BPD Rules and Procedures 2003, *supra* note 208, at Rule 303, Sec. 11; District of Columbia Metropolitan Police Department, General Order: Use of Force Investigations GO-RAR-901.08, available at <http://www2.justiceonline.org/dcmpd/GO90108.pdf>.

²¹¹ DC Standard Operating Procedures, *supra* note 207, at 16 (describing the “Force Investigation Team”).

²¹² Denver Police Department, Use of Force Policy 105.01, available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>; DC Standard Operating Procedures, *supra* note 207, at L-19 (“Members who observe other members engaging in misconduct against citizens shall report such misconduct to an official as soon as practicable.”).

²¹³ NYPD Patrol Guide 203-11; *see also* NYPD Patrol Guide 207-21, Allegations Of Corruption And Other Misconduct Against Members Of The Service (2009) (“All members of the service have an absolute duty to report any corruption or other misconduct, or allegation of corruption or other misconduct, of which they become aware.”).

²¹⁴ Willow Schragar, *Report: Police Facilitation of Mass Protests (File No. 030635)*, SAN FRANCISCO BOARD OF SUPERVISORS (2003), available at <http://www.sfbos.org/index.aspx?page=1182> (“The general principles guiding police response to citizen unrest are nearly identical for the police departments of San Francisco, New York City, and Seattle. All three state that it is the policy of the police department to ensure that First Amendment rights are protected, that police involvement will only be as extensive and necessary to protect citizens and the community, and the needs of law enforcement.”); *see also* San Francisco Police Department, General Order: Crowd Control, *supra* note 203; DC Standard Operating Procedures, *supra* note 207, at 4-5; Seattle Police Department Manual, 14.090—Unusual Occurrences (2004) [hereinafter SPD Unusual Occurrences]; New York City Police Department, *Police Student’s Guide: Maintaining Public Order* 21 (2004), available at <http://www.nyclu.org/files/NYPD%20Student%20Guide%20-%20Maintaining%20Public%20Order.pdf> [hereinafter NYPD Police Student’s Guide].

²¹⁵ NYPD Police Student’s Guide, *supra* note 214, at 22; San Francisco Police Department Crowd Control Manual, Section IV (“The amount of force employed shall be only in proportion to violence or resistance encountered and limited to the degree minimally necessary to accomplish the dispersal.”) (*quoted in* Police Commission of the City and County of San Francisco, Oct. 5, 2005 Meeting Minutes, <http://sf-police.org/Modules/ShowDocument.aspx?documentid=22780>); DC Standard Operating Procedures, *supra* note 207, at 5.

²¹⁶ NYPD Police Student’s Guide, *supra* note 214; other NYPD materials are available on the New York Civil Liberties Union website, <http://www.nyclu.org/rncdocs>.

NYPD's demonstration policing strategies, although it is unclear whether the strategies described in these documents are still in force today or if they have been changed in any relevant respects.

Demonstration policing policies generally encourage police forces to contact those in charge of the demonstration in advance, where possible, to facilitate cooperation and communication.²¹⁷ The NYPD's *Police Student's Guide* recognizes the value of a constructive relationship between protesters and police: "A lack of professionalism or the use of unnecessary force against civilians damages the relationship between the Department and the community, as well as the Department's image."²¹⁸ The *Guide* tells police officers in training, "The most desirable method of handling demonstrations is with reasonableness rather than confrontation."²¹⁹ Other policies also emphasize the importance of communication and establishing a positive relationship with participants in the demonstration.²²⁰

Notably, the demonstration policing policy in Oakland, California, is the only one reviewed that makes specific reference to the potential impact of general policing posture on free speech, stating, "a large and visible police presence may have a chilling effect on the exercise of free speech rights," and for this reason, officers are instructed to "be positioned at a reasonable distance from the crowd to avoid a perception of intimidation" and to deploy resources for mass arrests "so they are not readily visible to the crowd."²²¹

The Washington, D.C. Police Department's demonstration policing policy specifically forbids officers patrolling public demonstrations from doing anything to conceal their identifying information (including their name and badge number), and reminds officers that they "are required to verbally identify themselves when asked their identities."²²² Oakland's demonstration policing policy similarly requires officers to keep their identification number and/or name clearly visible at all times.²²³ NYPD officers are generally required to provide their name and shield number when requested and may be subject to discipline for failing to do so.²²⁴

The use of force in the context of mass demonstrations. During public demonstrations, U.S. law and policy contemplate the potential use of force for two purposes: to arrest individuals who are liable for arrestable offenses and to disperse individuals gathered in violation of the law.

For the most part, the rules for the use of force to effect an individual arrest during a mass demonstration are the same as the rules set out in a police department's general use of force policy. Some departments' policies reference the particular concerns the use of force poses in

²¹⁷ See Oakland Police Dep't, Crowd Control and Crowd Management Policy 5 (2005), available at <http://info.publicintelligence.net/OPD-CrowdControl.pdf> [hereinafter OPD Crowd Control Policy]; SPD Unusual Occurrences, *supra* note 214; NYPD Patrol Guide 213-11, Policing Special Events/Crowd Control (2002).

²¹⁸ NYPD Police Student's Guide, *supra* note 214, at 14.

²¹⁹ *Id.* at 21.

²²⁰ The Oakland Police Department instructs officers "to establish liaison and positive communication with the group as early as possible at the scene of the demonstration or crowd event", even if the group has not responded to attempts to communicate prior to the demonstration. See OPD Crowd Control Policy, *supra* note 217, at 3. The D.C. Police Department specifically instructs officers to "be courteous and helpful, mindful that expressions of friendliness are a valuable tool in maintaining peace." DC Standard Operating Procedures, *supra* note 207, at 21.

²²¹ OPD Crowd Control Policy, *supra* note 217, at 5.

²²² DC Standard Operating Procedures, *supra* note 207, at 20.

²²³ OPD Crowd Control Policy, *supra* note 217, at 5.

²²⁴ NYPD Patrol Guide 206-03, Violations Subject To Command Discipline (2010); 203-09, Public Contact—General, (2000) ("Courteously and clearly state your rank, name, shield number and command, or otherwise provide them, to anyone who requests you to do so. Allow the person ample time to note this information.").

the context of exercising First Amendment rights, and these policies either set out different rules for the use of force in such circumstances or include a particular exhortation to officers to take care when using force in these cases. For example, the Oakland demonstration policing policy repeatedly emphasizes the need to minimize the use of physical force against protesters.²²⁵ The police department in Seattle, Washington, states that the use of “individually issued less-lethal weapons (i.e., baton) is not prohibited [in a demonstration policing context], but should be strictly controlled.”²²⁶ In general, a supervising officer must make the decision to use force against demonstrators, except in cases where force is necessary to defend an officer or another from imminent danger.²²⁷

The NYPD *Police Student’s Guide* offers only general guidance on the use of force during demonstrations, stating that it should be used only when necessary “to prevent crime, to arrest, or for [officers’] protection or for the protection of others,” and that the minimum amount of force necessary should be used.²²⁸

The D.C. Police has formulated a detailed use of force policy for the specific context of policing mass demonstrations.²²⁹ The policy sets out a use of force continuum describing the types of force that may be employed by the Civil Disturbance Unit during mass demonstrations, and describes in substantial detail when each type of force is appropriate. The types of force contemplated for D.C. officers policing a mass demonstration include police lines; platoon formations (to move or divide a crowd); the use of batons, pepper spray, and other chemical agents; and deadly force.²³⁰

Use of “less-lethal” weapons. Many police forces have developed specific rules for the use of “less-lethal” weapons. Less-lethal weapons are so named because they are intended to be less likely to result in serious injury or death than deadly weapons such as firearms.²³¹ However, less-lethal weapons can cause permanent injury or death.²³² This category of weapons includes a wide range of items, including pepper spray, “bean bag” guns (which shoot cloth bags filled with small metal pellets), rubber bullets, wooden bullets, batons, and stun guns.²³³ Police departments make individual determinations on which of these less-lethal weapons will be available to officers.²³⁴ Policies on the use of less-lethal weapons vary widely in terms of the amount of detail provided on when the use of a particular type of less-lethal weapon is or is not appropriate.²³⁵ The use of less-lethal weapons requires special

²²⁵ OPD Crowd Control Policy, *supra* note 217.

²²⁶ SPD Unusual Occurrences, *supra* note 214.

²²⁷ OPD Crowd Control Policy, *supra* note 217, at 4.

²²⁸ NYPD Police Student’s Guide, *supra* note 214, at 22.

²²⁹ DC Standard Operating Procedures, *supra* note 207, at L-6 - L-12.

²³⁰ DC Standard Operating Procedures, *supra* note 207, at L-7 - L-12. The policy instructs police officers to refer to the Department’s general use of force policy as necessary. *Id.* at L-5.

²³¹ SPD Report, *supra* note 203, at 18.

²³² Christopher Stone, Brian Buchner & Scott Dash, *Crowd Control That Can Kill: Can American Police Get a Grip on Their New, “Less-Lethal” Weapons Before They Kill Again?*, RAPPAPORT INSTITUTE FOR GREATER BOSTON (Oct. 24, 2005), available at [http://www.parc.info/client_files/Articles/2%20-%20Less%20Lethal%20Policy%20Brief%20\(Oct.%202005\).pdf](http://www.parc.info/client_files/Articles/2%20-%20Less%20Lethal%20Policy%20Brief%20(Oct.%202005).pdf).

²³³ LESS LETHAL FORCE: PROPOSED STANDARDS FOR MASSACHUSETTS LAW ENFORCEMENT AGENCIES, AMERICAN CIVIL LIBERTIES UNION OF MASSACHUSETTS (2005), http://aclum.org/sites/all/files/education/less_lethal_report.pdf [hereinafter LESS LETHAL FORCE]; see, e.g., Boston Police Department, Rules and Procedures, Rule 303A (2000), available at http://www.cityofboston.gov/Images_Documents/rule303A_tcm3-9586.pdf [hereinafter BPD Rules and Procedures 2000]; District of Columbia Metropolitan Police Department, General Order: Use of Force GOC–RAR–901.07(III)(G) (2002), available at https://go.mpdconline.com/GO/GO_901_07.pdf.

²³⁴ See generally LESS LETHAL FORCE, *supra* note 233.

²³⁵ *Id.* at 16 (“Individual police department policy manuals expand to varying degrees on the philosophy of less lethal force.”); see, e.g., Denver Police Department, Use of Force Policy 105.03, available at <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx> (setting out fairly detailed policies for the use of less-lethal weapons including less-lethal shotguns, pepper ball guns, Tasers, and impact tools, as well as procedures for storing the weapons, reporting their use, and investigating their use).

training. Most of the use of force and demonstration policing policies reviewed for this report make reference to training needs, although few elaborate on exactly what training is required.²³⁶

Police frequently use less-lethal weapons at demonstrations, and the portions of police policies relating to less-lethal weapons that are relevant to demonstration policing actions are discussed below.

Batons. Batons are a common police weapon, and many use of force policies do not prescribe rules for their use beyond general instructions that use as a weapon of force must be objectively reasonable in light of the particular circumstances. Apart from their use, the mere display of a baton can also be coercive.²³⁷

Several departments' use of force policies caution against striking baton blows to the head. The D.C. Police demonstration policing policy states, "A strike to the head with a riot baton is considered deadly force," and prohibits baton strikes to the head or other vital areas.²³⁸ The San Francisco Police Department prohibits the use of overhead baton blows (bringing the baton over the officer's head before striking a blow), and discourages the use of batons to disperse participants in a public demonstration.²³⁹ The Boston Police Department's use of force policy states, "no blows should be struck above the thigh, other than to the arms" unless the officer is in "imminent danger of serious injury."²⁴⁰

The U.S. Army has stipulated that for soldiers operating in a civil disturbance setting, "[t]he riot baton is never raised above the head to strike a subject in a club fashion....it is likely to cause permanent injury."²⁴¹ The policy notes that baton strikes to the back of head, neck, spine, or kidneys may result in death, while strikes to elbows, knees, and the chest can induce moderate trauma and cause permanent damage.²⁴²

The Oakland Police Department has specific rules for how and when batons may be used during demonstration policing, authorizing "pushing or jabbing motion[s]."²⁴³ Oakland's policy also instructs officers that:

Baton jabs should not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest.

²³⁶ LESS LETHAL FORCE, *supra* note 233, at 21 ("While most manuals specify that officers must be trained in the use of less lethal weapons before being allowed to carry and deploy them, the details of the frequency, content, and structure of training are noticeably absent from most of the manuals we reviewed."); *see also* DC Standard Operating Procedures, *supra* note 207, at 14 (referencing certifying grenadiers "in the use of all departmental less lethal and chemical weapons."); SPD Report, *supra* note 203, at 16-17 (discussing training for various types of less-lethal weapons); SPD Use of Force, *supra* note 207, at Sec. X(D)(1) ("The Department will provide officers, at a minimum, biannual training in the use of less lethal weapons. This training will also include the use of OC spray and impact weapons.").

²³⁷ Department of the Army, FM 3-19.15: Civil Disturbance Operations 2-13 (2005) (noting the "psychological effects of show of force").

²³⁸ DC Standard Operating Procedures, *supra* note 207, at L-11.

²³⁹ San Francisco Police Department, General Order 5.01, Sec. I.K ("[T]he baton should normally never be raised above the head to strike a blow. The use of the baton as a club is generally prohibited."); San Francisco Police Department, Crowd Control Manual, Sec. VIII ("Officers are instructed that during crowd control situations, extreme caution must be taken and considered judgment exercised before using the baton.") (quoted in Police Commission of the City and County of San Francisco, Oct. 5, 2005 Meeting Minutes (2005), *available at* <http://sf-police.org/Modules/ShowDocument.aspx?documentid=22780>).

²⁴⁰ BPD Rules and Procedures 1994, *supra* note 203, at Rule 304, Sec. 5.

²⁴¹ Department of the Army, *supra* note 237.

²⁴² *Id.*

²⁴³ OPD Crowd Control Policy, *supra* note 217, at 14 ("[B]atons may be used in a pushing or jabbing motion. Baton jabs should not be used indiscriminately against a crowd or group of persons but only against individuals who are physically aggressive or actively resisting arrest.").

Baton jabs should not be used in a crowd control situation against an individual who is physically unable to disperse or move because of the press of the crowd or some other fixed obstacle.²⁴⁴

Chemical agents. Demonstration policing policies offer general rules for the use of chemical agents, a category that includes pepper spray and tear gas. In general, police departments require a supervising officer to approve the use of pepper spray or tear gas for demonstration policing purposes, and require that officers give a dispersal order before using chemical agents against demonstrators.²⁴⁵ Police must also provide for appropriate medical attention to those exposed to chemical agents.²⁴⁶

Police departments have set different rules for when officers may use chemical agents during a public demonstration. The ACLU has observed that the NYPD's policy on the use of tear gas "does not provide any policy guidance on the circumstances under which the use of tear gas is appropriate or recommended."²⁴⁷ The D.C. Police permits the use of chemical agents only "to protect officers or others from physical harm or to arrest actively resisting subjects, or the crowd or others are endangering public safety or security."²⁴⁸ The D.C. Police policy further specifies that pepper spray may be used "to disperse a group of demonstrators/protesters who are creating unsafe or disruptive conditions and/or are actively resisting the police," and tear gas may be deployed only:

for the purpose of dispersing crowds that are threatening or actively engaging in violence or to protect lives and property when the circumstances indicate that the use of chemical "CS" agents would be the most effective manner of accomplishing the objective.²⁴⁹

The Oakland Police Department permits the use of chemical agents during demonstration policing operations "only if other techniques, such as encirclement and multiple simultaneous arrest or police formations, have failed or will not accomplish the policing goal as determined by the Incident Commander."²⁵⁰ The Seattle Police Department authorizes the use of chemical agents against crowds to prevent violence, for the "suppression and dispersal of unlawful assemblies," to overcome passive or aggressive resistance to arrest, or

²⁴⁴ OPD Crowd Control Policy, *supra* note 217, at 14.

²⁴⁵ *Id.*; SPD Unusual Occurrences, *supra* note 214 (In addition, the commanding officer who authorized the use of chemical agents or other less-lethal weapons during a crowd management situation must file a Use of Force report justifying the decision.); Denver Police Department, Operations Manual, 108.00, 108.08(8) (2011), *available at* <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx> (recommending that where possible, police attempt to manage crowds through isolation, a show of "forceful presence" of police officers, audible dispersal orders, and arrests before using dispersal techniques such as the use of tear gas and other less-lethal weapons).

²⁴⁶ NYPD Patrol Guide 212-92, Use of Tear Gas (2000) ("First aid procedures call for the immediate removal of persons from the contaminated area to an open and upwind position. Eyes should be kept open and facing the wind and, if feasible, flushing the face, eyes and exposed skin with copious amounts of fresh, cool water is recommended."); NYPD Patrol Guide 212-95, Use of Pepper Spray Devices (2000) (details the assistance to be provided, including flushing the affected individual's "contaminated skin area" with water, and noting that the desk officer is responsible for ensuring that individuals "receive prompt medical attention if they need or request it."); OPD Crowd Control Policy, *supra* note 217, at 14; DC Standard Operating Procedures, *supra* note 207, at L-10.

²⁴⁷ LESS LETHAL FORCE, *supra* note 233, at 19.

²⁴⁸ DC Standard Operating Procedures, *supra* note 207, at L-10, L-11.

²⁴⁹ *Id.*

²⁵⁰ OPD Crowd Control Policy, *supra* note 217, at 14. The Denver Police Department has a very similar policy. *See* Denver Police Department, Operations Manual, 108.00, 108.08(8) (2011), *available at* <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx> (recommending that where possible, police attempt to manage crowds through isolation, a show of "forceful presence" of police officers, audible dispersal orders, and arrests before using dispersal techniques such as the use of tear gas and other less-lethal weapons).

to “prevent further destruction of property when other means are not practical.”²⁵¹ Both the Seattle Police Department and the NYPD allow for the use of pepper spray for the purpose of policing a public demonstration by officers who are specially trained, with authorization from the appropriate supervisors.²⁵²

Pepper spray can be deployed operationally through handheld dispensers against an individual or through mechanisms that spray a larger area to disperse a crowd (in much the same way as tear gas).²⁵³ The use of pepper spray via handheld dispensers is governed by departments’ general use of force policies.²⁵⁴ The NYPD and Seattle Police Department give special instructions to officers on the use of handheld pepper spray containers in a demonstration policing setting. The Seattle PD states that use of pepper spray against individuals during a demonstration “should be strictly controlled,”²⁵⁵ while the NYPD instructs officers to “[a]void discharging pepper spray indiscriminately over a large area for disorder control.”²⁵⁶

The NYPD Patrol Guide instructs officers using pepper spray against individuals to “discharge pepper spray into a subject’s eyes for maximum effectiveness, using two one second bursts, at a minimum distance of three feet,” and authorizes the use of pepper spray “when a member reasonably believes it is necessary to effect an arrest of a resisting suspect, for self-defense or defense of another from unlawful force, or to take a resisting emotionally disturbed person into custody.”²⁵⁷ The NYPD cautions officers to avoid using it on children, pregnant women, and those in frail health and with respiratory conditions.²⁵⁸ Medical assistance must be given to those exposed to pepper spray.²⁵⁹

Police departments take varying stances on the use of chemical agents against protesters who are *passively resisting* (by refusing to comply with orders to disperse, remaining in a seated position, or “going limp”). The NYPD Patrol Guide states that pepper spray should not be used “on subjects who passively resist (e.g., going limp, offering no active physical resistance).”²⁶⁰ The Seattle Police Department’s general use of force policy states that:

²⁵¹ SPD Unusual Occurrences, *supra* note 214.

²⁵² NYPD Patrol Guide 212-95 (“Members who are specifically trained in the use of pepper spray for disorder control may use pepper spray in accordance with their training, and within Department guidelines, and as authorized by supervisors.”); SPD Use of Force, *supra* note 207, at Sec. X(F)(1) (“The Special Weapons and Tactics (SWAT) team, or designee, has the responsibility to deploy crowd dispersal chemical agents and/or Less Lethal devices during an Unusual Occurrence. The Incident Commander shall be given authority to direct the use of chemical agents...”).

²⁵³ LESS LETHAL FORCE, *supra* note 233, at 3.

²⁵⁴ BPD Rules and Procedures 1994, *supra* note 203, at Rule 304, Sec. 4 (“[O]fficers should generally confine the use of incapacitating agents against armed or unarmed persons to the following situations: 1. In self defense or to defend another person against a violent physical assault. 2. When an officer, while making an arrest is met with vigorous physical resistance and is in danger of either being injured or of losing custody of the suspect.”).

²⁵⁵ SPD Unusual Occurrences, *supra* note 214. Note that the SPD has separate rules for the deployment of pepper spray by SWAT teams. *See supra* note 252.

²⁵⁶ NYPD Patrol Guide 212-95. Note that this instruction applies to officers who are not specially trained in the use of pepper spray for demonstration policing; *see supra* note 252.

²⁵⁷ NYPD Patrol Guide 212-95. The Patrol Guide also specifies that “Pepper spray shall not be used in situations that do not require the use of physical force.” The Boston Police Department follows a very similar policy. *See BPD Rules and Procedures 1994, supra* note 203, at Rule 304, Sec. 4 (“[A]ll officers should be aware of the potential, however limited, for serious injury arising from the use of an incapacitating agent. For this reason, officers should generally confine the use of incapacitating agents against armed or unarmed persons to the following situations: 1. In self defense or to defend another person against a violent physical assault. 2. When an officer, while making an arrest is met with vigorous physical resistance and is in danger of either being injured or of losing custody of the suspect.”).

²⁵⁸ NYPD Patrol Guide 212-95.

²⁵⁹ *Id.*

²⁶⁰ *Id.*

Less lethal force, specifically OC spray (Oleoresin Capsicum) or other riot control agents, shall not ordinarily be used to overcome passive resistance by nonviolent and/or peaceful protesters, absent additional compelling factors, or unless previously approved by the Incident Commander.²⁶¹

Confusingly, however, Seattle's demonstration policing policy states that chemical agents may be used to counter passive resistance.²⁶²

Conducted Energy Devices. Conducted Energy Devices (CEDs), which include stun guns and Tasers®, generally function “by delivering a high voltage electric current into a target, resulting in a loss of neuromuscular control and the ability to perform coordinated action for the duration of the shock.”²⁶³ CEDs have generated substantial debate regarding their safety and suitability as a law-enforcement tool.²⁶⁴ The Oakland Police Department specifically forbids the use of CEDs for demonstration policing purposes.²⁶⁵ In contrast, the Denver Police Department permits the use of CEDs for demonstration policing.²⁶⁶

The NYPD permits the use of CEDs in limited situations: “against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or other person(s) actually present.”²⁶⁷ The NYPD forbids the use of a CED against individuals “as a form of coercion or punishment and on persons who passively resist.”²⁶⁸ The officer must warn the subject before using the CED and should “avoid discharging at an individual’s head, neck and chest, if possible.” After the use of the CED, the officer must request medical assistance for the subject. All uses of the CED must be reported and investigated by supervisors.²⁶⁹

The NYPD’s instructions on CED use are in line with recommendations from the National Institute of Justice, and are the most detailed of the policies reviewed for this report.²⁷⁰ The National Institute of Justice reports that most police agencies in the United States “do not allow CED use against a subject who nonviolently refuses to comply with demands. However, six in 10 allow for CED use against a subject who tenses and pulls when the officer tries to handcuff him or her.”²⁷¹

Civil disobedience. Civil disobedience refers to protesters who refuse to obey certain laws or orders in order to further their message, or to highlight the alleged injustice of certain laws or orders. Regardless of whether protesters are engaging in civil disobedience, police

²⁶¹ SPD Use of Force, *supra* note 207, at Sec. X(F).

²⁶² SPD Unusual Occurrences, *supra* note 214.

²⁶³ LESS LETHAL FORCE, *supra* note 233, at 5.

²⁶⁴ See, e.g., Mark Silverstein, *Tasers: Evaluating claims of excessive force*, NATIONAL POLICE ACCOUNTABILITY PROJECT SKILLS SEMINAR (Oct. 19, 2006), http://www.acluvt.org/issues/tasers/evaluating_excessive_force_claims.pdf; LESS LETHAL FORCE, *supra* note 233, at 5-6; AMNESTY INTERNATIONAL, LESS THAN LETHAL? THE USE OF STUN WEAPONS IN U.S. LAW ENFORCEMENT (2008). Taser International disputes allegations that Tasers are unsafe. See generally Taser International, *Research and Safety*, <http://www.taser.com/research-and-safety/science-and-medical>.

²⁶⁵ OPD Crowd Control Policy, *supra* note 217, at 17 (“EID’s such as tasers, stun guns, and stun shields shall not be used for crowd management, crowd control, or crowd dispersal during demonstrations or crowd events.”)

²⁶⁶ Denver Police Department, Operations Manual, 108.00, 108.08(8) (2011), *available at* <http://www.denvergov.org/DenverPoliceDepartmentOperationsManual/tabid/392273/Default.aspx>.

²⁶⁷ NYPD Patrol Guide Series 212, Use of Conducted Energy Devices (CED), Interim Order No. 20-1, (2010). The NYPD considers the CED to be “within the range of use of less lethal devices such as pepper spray or a baton on the force continuum due to its effectiveness at a distance and at close range.” *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ GEOFFREY ALPERT ET AL., POLICE USE OF FORCE, TASERS AND OTHER LESS-LETHAL WEAPONS 15-16 (National Institute of Justice, May 2011), <https://www.ncjrs.gov/pdffiles1/nij/232215.pdf>.

²⁷¹ *Id.* at 5-6 (This report also notes that “Agencies usually place the CED with chemical agents in their force continuum, meaning that their use is typically approved in the same circumstances in which pepper spray use is allowed. CEDs are usually lower on the continuum than impact weapons.”).

officers may arrest only those who are engaging in criminal conduct subject to arrest, not protesters who are complying with the law or bystanders in the area.²⁷² Police department policies generally instruct officers to address civil disobedience by issuing warnings to protesters and giving them reasonable time to end the unlawful conduct or to disperse.²⁷³ Such policies are in line with ACLU recommendations on how to handle protests involving civil disobedience.²⁷⁴

Dispersing a public demonstration. The policies of several departments make clear that police may issue dispersal orders only where participants in the demonstration have engaged in illegal conduct, or where the demonstration poses “a clear and present danger of imminent violence.”²⁷⁵ Dispersal orders must include an explanation of the violation or offense being committed by protesters, and a command to disperse or cease the illegal activity.²⁷⁶ The D.C. police policy, for example, provides that a decision to make arrests should be taken only “after an order to disperse has been clearly communicated in a manner that is reasonably calculated to be heard by each of the persons in the group and a reasonable opportunity to disperse has been afforded, but not utilized by members of the assembly.”²⁷⁷

Some police departmental policies state that a failure to obtain required permits for the demonstration is not sufficient to declare an assembly unlawful, and thus to disperse it.²⁷⁸

Police departments have differing rules on how to disperse a group of demonstrators who have not obeyed a dispersal order. The Oakland Police Department instructs officers to make arrests where necessary to disperse a “non-violent demonstration that fails to disperse and voluntarily submits to arrest as a form of political protest,” rather than using force to induce dispersal of the crowd.²⁷⁹ The D.C. Police demonstration policing policy permits officers to employ several options when dealing with demonstrators who are engaging in civil disobedience: giving orders to disperse, using “tactical maneuvers and other crowd

²⁷² AMERICAN CIVIL LIBERTIES UNION, ISLAND OF IMPUNITY: PUERTO RICO’S OUTLAW POLICE FORCE 146 (2012), http://www.aclu.org/files/assets/islandofimpunity_20120619.pdf.

²⁷³ NYPD Police Student’s Guide, *supra* note 214, at 19 (“The general policy of the New York City Police Department is to warn non-violent demonstrators before making arrests.”); DC Standard Operating Procedures, *supra* note 207, at 11; OPD Crowd Control Policy, *supra* note 217, at 11.

²⁷⁴ The ACLU recommends as a policing best practice that police “give those engaged in civil disobedience the realistic opportunity to comply with the law, and to distinguish between those who are in violation of the law and bystanders and protesters engaged in protected First Amendment activity who are not disobeying the law.” See AMERICAN CIVIL LIBERTIES UNION, *supra* note 272, at 146.

²⁷⁵ OPD Crowd Control Policy, *supra* note 217, at 11; see also DC Standard Operating Procedures, *supra* note 207, at 11 n.5 (“General orders to disperse a First Amendment assembly shall not be given unless a significant number of the participants fail to adhere to reasonable restrictions or a significant number of the participants are engaging in, or are about to engage in, unlawful disorderly conduct or violence towards persons or property.”).

²⁷⁶ New York City Police Department, *Legal Guidelines For the Republican National Convention* 35 (Mar. 10, 2004), <http://www.nyclu.org/files/NYPD%20Legal%20Guidelines%20for%20RNC%203-10-04.pdf> [hereinafter NYPD Legal Guidelines] (listing suggested formulations for giving warnings); DC Standard Operating Procedures, *supra* note 207, at 22.

²⁷⁷ DC Standard Operating Procedures, *supra* note 207, at 23; see also NYPD Legal Guidelines, *supra* note 276, at 35 (listing suggested formulations for giving arrest warnings, including allowing time for participants to comply with warning given); DC Standard Operating Procedures, *supra* note 207, at 11, 22-23 (listing procedures for crowd dispersal and stating that “three warnings should be given absent exigent circumstances”); NYPD Police Student’s Guide, *supra* note 214, at 19 (“The general policy of the New York City Police Department is to warn non-violent demonstrators before making arrests.”).

²⁷⁸ DC Standard Operating Procedures, *supra* note 207, at 9 (“Members of the Metropolitan Police Department are reminded that the charge of ‘Parading without a Permit’ is not an offense and shall not be used to detain anyone.”); OPD Crowd Control Policy, *supra* note 217, at 11.

²⁷⁹ The Oakland Police Department’s crowd control policy instructs officers to conduct “multiple simultaneous arrests” to disperse a non-violent demonstration, rather than using weapons or force to do so. See OPD Crowd Control Policy, *supra* note 217, at 10.

management formations” to disperse those violating the law, arresting those violating the law (where probable cause exists), and using less-lethal weapons against the protesters.²⁸⁰

Mass arrests. During large demonstrations, some police forces conduct mass arrests in which everyone within a given physical area is arrested. This practice can result in individuals who are not part of the demonstration being arrested because they are passing through the area at the time the arrest is conducted. After using mass arrests as a demonstration policing tactic during the 1999 World Trade Organization protests in Seattle, the Seattle Police Department now reportedly “believes that it is usually more effective tactically to focus law enforcement efforts on particular individuals who may lead others into criminal misbehavior.”²⁸¹

The D.C. Police discourages mass arrests as a demonstration policing tactic, and requires officers to first “make reasonable efforts to employ non-arrest methods of crowd management as the primary means of restoring order.”²⁸² If these methods fail, officers can make arrests “based on probable cause, and arresting officers shall use only the minimum necessary force to make and maintain the arrest.”²⁸³ The department has also developed a detailed policy relating to mass arrests of demonstrators, including a step-by-step procedure for determining whether a mass arrest is necessary, a detailed explanation of how to make the mass arrest, and transportation and processing those arrested.²⁸⁴

Flex cuffs. Flex cuffs, also known as double cuffs, plastic restraints, or zip ties, are used by police as an alternative to metal handcuffs. Flex cuffs are lightweight and made of flexible plastic.²⁸⁵ They are generally used in situations where large numbers of people are arrested and there are not enough metal handcuffs available.²⁸⁶ They are designed to be only temporary restraining devices.²⁸⁷ Flex cuffs are applied by inserting each end of the cuff into a locking mechanism located at the middle of the cuff; the ends are pulled through the locking mechanism and drawn tight.²⁸⁸

Flex cuffs pose two principal concerns for police officers: the safety of the officer and the safety of the detainee.²⁸⁹ Flex cuffs raise two concerns regarding the safety of the detainee: bruising and lacerations to the skin, and lack of circulation.²⁹⁰ Handcuffs or flex cuffs that are too tight can cause handcuff neuropathy, temporary or long-lasting nerve damage to the wrist.²⁹¹ However, handcuff-related injury and nerve damage is preventable when officers are properly trained on the possibility of injury and the need to respond promptly to

²⁸⁰ DC Standard Operating Procedures, *supra* note 207, at 9.

²⁸¹ See Schrager, *supra* note 214. This report indicates that the Seattle Police Department still considers mass arrests as an available option, but also notes that “Seattle has not employed mass arrests since the 1999 protests surrounding the meeting of the World Trade Organization.”

²⁸² DC Standard Operating Procedures, *supra* note 207, at 5.

²⁸³ *Id.* at 5.

²⁸⁴ *Id.* at 18-20.

²⁸⁵ New York Police Department, Disorder Control Training Materials, *Double Cuffs—Introduction*, 3, available at <http://www.nyclu.org/files/Double%20Cuff%20-%20Introduction.pdf> [hereinafter NYPD Double Cuff Introduction] (part of a set of documents obtained by the New York Civil Liberties Union via a FOIL request, pertaining to NYPD policing during the 2004 Republican National Convention).

²⁸⁶ *Id.* at 2-3.

²⁸⁷ *Id.* at 3.

²⁸⁸ NYPD Double Cuff Introduction, *supra* note 285, at 4.

²⁸⁹ *Id.* at 5; OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR (CANADA), POLICING THE RIGHT TO PROTEST: G20 SYSTEMIC REVIEW REPORT 239 (2012), https://www.oiprd.on.ca/CMS/getattachment/Publications/Reports/G20_Report_Eng.pdf.aspx [hereinafter G20 Review Report].

²⁹⁰ NYPD Double Cuff Introduction, *supra* note 285, at 6.

²⁹¹ Arthur C. Grant, M.D., Ph.D., and Albert A. Cook, M.D., *A Prospective Study of Handcuff Neuropathies*, 23 MUSCLE NERVE 933 (1999).

complaints of handcuff-related pain.²⁹²

Many police department policies do not make specific reference to the use of flex cuffs. However, those that do warn of the possibility that when applied too tightly, flex cuffs can cause pain and injury to the person wearing them.²⁹³ Policies generally require officers to check that the cuffs are not too tight both when applying them and if the arrestee complains or claims to be in pain.²⁹⁴ The NYPD's instructions on the use of flex cuffs, issued prior to the 2004 Republican National Convention protests, specify that when tightening the cuffs, "[e]xcess space should be eliminated by paying careful attention to insuring adequate blood [sic] circulation to the hand."²⁹⁵ The NYPD also requires that individuals wearing flex cuffs be checked periodically to ensure that their extremities receive an adequate amount of blood, and remove and provide medical assistance where appropriate.²⁹⁶ The police are to be aware of: (1) whether the hands are cold, (2) whether the hands lose color, (3) if the detainee reports of tingling, (4) whether the detainee complains of numbness, and (5) blue fingernails.²⁹⁷ The NYPD has developed protective flex cuff pads, which are intended "to limit injuries to non-violent persons arrested at the scene of a disorder and who are not an escape risk."²⁹⁸ However, use of these protective pads appears to be infrequent at best.

The D.C. Police instructs officers to check the tightness of the cuffs by placing an index finger between the cuff and the arrestee's wrist; if the officer cannot do this, the cuffs are too tight.²⁹⁹ Several policies require officers to be equipped with a cutting tool and extra flex cuffs so that too-tight cuffs may be replaced promptly.³⁰⁰ In a review of the Toronto Police Service's handling of protesters during the 2010 G20 Summit, Canada's Office of the Independent Police Review Director noted that police applied flex cuffs to arrested protesters and then left them on, sometimes for many hours.³⁰¹ The Office recommended that:

The use of flex cuffs should be discontinued or, alternatively, be used only in immediate situations of mass arrest in the field during dynamic situations. They should be applied only for short duration and be replaced by ASP [a different type of plastic wrist restraint] restraints or by regular metal handcuffs.³⁰²

²⁹² *Id.* at 937 ("These injuries are preventable. Law enforcement officers should be aware of the possibility of nerve injury with overtightened handcuffs, and should respond promptly to prisoner complaints of uncomfortable handcuff-related wrist compression...The unawareness [that handcuffs pose a risk] of potential nerve injury may make officers less responsive to complaints of hand numbness or tingling in handcuffed prisoners.").

²⁹³ OPD Crowd Control Policy, *supra* note 217, at 20 ("[F]lex-cuffs may tighten when arrestees' hands swell or move, sometimes simply in response to pain from the cuffs themselves.").

²⁹⁴ *Id.*; DC Standard Operating Procedures, *supra* note 207, at H-3, H-4; *see also* Nevada Dep't. of Corr. Admin. Reg. 407, Use of Handcuffs and Restraints 3 (June 17, 2012), <http://www.doc.nv.gov/sites/doc/files/pdf/AR407.pdf> (stating that inmates wearing flex cuffs "must be under direct supervision and the cuffs checked every fifteen (15) minutes to ensure proper application.").

²⁹⁵ NYPD Double Cuff Introduction, *supra* note 285, at 5.

²⁹⁶ *Id.* at 6.

²⁹⁷ *Id.*

²⁹⁸ These pads are described as adjustable foam pads that fit over the wrists and are secured by Velcro. *Id.* at 7.

²⁹⁹ DC Standard Operating Procedures, *supra* note 207, at H-3.

³⁰⁰ OPD Crowd Control Policy, *supra* note 217, at 20; NYPD Double Cuff Introduction, *supra* note 285, at 6 (the NYPD describes the cutting tool as a small pliers with a cutting edge); NYPD Training Lesson, *Cuffing from the Hammer Lock/Flex Cuffs* 5 (2004), available at <http://www.nyclu.org/files/Cuffing%20from%20the%20Hammer%20Lock-Flex%20Cuffs%20-%20May%202004.pdf> ("When using cutters to remove flex cuffs, take care that you do not cut into the skin. The flex cuffs should be cut in the area where the thin plastic strip meets the entrance to the serrated box, where there is a natural gap between the flex cuff and the subject's wrist.").

³⁰¹ G20 Review Report, *supra* note 289, at 239-40.

³⁰² G20 Review Report, *supra* note 289, at 241.

Protest action that obstructs traffic. In general, demonstration policing policies do not give specific instructions for how to address protests that result in the obstruction of traffic. Oakland's demonstration policing policy is an exception, however, and states that:

Regardless of whether a parade permit has been obtained, OPD officers will try to facilitate demonstrations that may temporarily block traffic and/or otherwise use public streets subject to time, place and manner of circumstances, by regulating and/or rerouting traffic as much as possible. For a demonstration without a pre-planned route, the Incident Commander shall evaluate the size of the crowd with regard to whether demonstrators should be required to stay on the sidewalk or whether demonstrators should be allowed to be in one or more lanes of traffic.³⁰³

In order to make this evaluation, the commanding officer is instructed to:

[B]alance the level of disruption to traffic against the OPD policy of facilitating First Amendment activity, the practicality of relegating the crowd to sidewalks or an alternate route, the expected duration of the disruption, and the traffic disruption expected in making a mass arrest if demonstrators refuse to leave the street.³⁰⁴

Chapter Three: International Law and Protest Rights

1. Introduction: The Right to Engage in Peaceful Protest and Political Assembly

This chapter sets out the international legal framework for the rights to engage in peaceful protest and political assembly. It explains the basis for the protections in international law and why the rights are foundational to democracy, outlines specific protected protest and assembly activities, and describes the limited permissible restrictions a government may impose on the exercise of these rights. This chapter also sets out the international law on the use of force by law enforcement during protests, and the legal requirements of investigation and accountability for any alleged violations. The focus in this chapter is on those aspects of the rights that are of most relevance to the practices of the Occupy movement and the government response to it in the United States, including in relation to marches, encampments, public assemblies, police use of force and assembly dispersal, kettling (the police practice of corralling protesters and refusing to let them leave), press and observer freedoms, government surveillance, and accountability for official misconduct.

U.S. Secretary of State Hillary Rodham Clinton affirmed in May 2012 that:

Universal human rights include the right of citizens to assemble peacefully and to seek to reform or change their governments.³⁰⁵

The rights of those engaging in peaceful protest and political assembly are protected through an interconnected set of universally recognized human rights and fundamental freedoms. The freedom to protest is guaranteed by the twin pillars of freedom of assembly³⁰⁶ and

³⁰³ OPD Crowd Control Policy, *supra* note 217, at 5.

³⁰⁴ *Id.*

³⁰⁵ U.S. Sec'y of State Hillary Rodham Clinton, "Secretary's Preface", in U.S. Dep't of State, Bureau of Democracy, Human Rights and Labor, *Country Reports on Human Rights Practices for 2011* (2011). The Secretary of State's Preface also acknowledged the work of activists around the world seeking to hold their governments to account and to advance justice and respect for rights.

³⁰⁶ International Covenant on Civil and Political Rights art. 21, *opened for signature* Dec. 16, 1966, 999 U.N.T.S. 171 (entered into force Mar. 23, 1976) [hereinafter ICCPR] ("The right of peaceful assembly shall be recognized.");

freedom of expression.³⁰⁷ Peaceful protest and political assembly are also protected by the freedoms of opinion³⁰⁸ and of association,³⁰⁹ the rights to participate in the conduct of public affairs,³¹⁰ to promote and protect human rights,³¹¹ to liberty and security, and to be free from arbitrary detention³¹² and torture or cruel, inhuman or degrading treatment or punishment.³¹³

These core rights and freedoms are recognized in all the major international and regional human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), which the US has ratified.³¹⁴ As a state party, the US Government has binding international legal obligations to respect, protect, promote and fulfill these rights.³¹⁵ The ICCPR binds all levels of government in the US—federal, state, and local—as well as private entities exercising delegated government authority, to respect the protected rights.³¹⁶ In

Universal Declaration of Human Rights art. 20, G.A. Res. 217A (III), U.N. Doc A/810 at 71 (1948) [hereinafter UDHR]; International Convention on the Elimination of All Forms of Racial Discrimination, art. 5(d)(ix), 660 U.N.T.S. 195 (*entered into force* Jan. 4, 1969); Convention on the Rights of the Child, art. 15, G.A. Res. 44/25, U.N. Doc. A/44/49 (1989) (*entered into force* Sept. 2, 1990) [hereinafter CRC]; Organization of American States, American Declaration on the Rights and Duties of Man, art. XXI, OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1948); European Convention on Human Rights, art. 11, 213 U.N.T.S. 221 (Nov. 4, 1950); Organization of African Unity, African Charter on Human and Peoples' Rights, art. 11, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981) (*entered into force* Oct. 21, 1986); League of Arab States, Arab Charter on Human Rights, art. 28, (Sept. 15, 1994) *available at* <http://www.unhcr.org/refworld/docid/3ae6b38540.html> [accessed 9 July 2012]; G.A. Res. 53/144, 4 (art. 5), U.N. Doc. A/RES/53/144 (Mar. 8, 1999) (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms).

³⁰⁷ ICCPR, art. 19(2) ("Everyone shall have the right to freedom of expression."); UDHR, art. 19; Organization of American States, American Declaration on the Rights and Duties of Man, art. IV, OEA/Ser.L/V/II.23, doc. 21, rev. 6 (1948); European Convention on Human Rights, art. 10, 213 U.N.T.S. 221 (Nov. 4, 1950); Organization of African Unity, African Charter on Human and Peoples' Rights, art. 9.2, CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (June 27, 1981) (*entered into force* Oct. 21, 1986).

³⁰⁸ *E.g.*, ICCPR, art. 19(1).

³⁰⁹ *E.g.*, ICCPR, art. 22.

³¹⁰ ICCPR, art. 25; *see also* U.N. Human Rights Comm., General Comment No. 25 (art. 25), *The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service* ¶ 25, U.N. Doc. CCPR/C/21/Rev.1/Add.7 (July 12, 1996) ("In order to ensure the full enjoyment of rights protected by article 25, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is essential...[i]t requires the full enjoyment and respect for the rights guaranteed in articles 19, 21 and 22 of the Covenant, including freedom to engage in political activity individually or through...other organizations, freedom to debate public affairs, to hold peaceful demonstrations and meetings, to criticize and oppose, [and] to publish political material").

³¹¹ G.A. Res. 53/144, 4 (arts. 1, 5), U.N. Doc. A/RES/53/144 (Mar. 8, 1999) (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms) (Article 1: "Everyone has the right, individually and in association with others, to promote and to strive for the protection and realization of human rights and fundamental freedoms at the national and international levels"; Article 5: "For the purpose of promoting and protecting human rights...everyone has the right... (a) To meet or assemble peacefully."); European Union Guidelines on Human Rights Defenders, Doc. No. 16332/2/08, rev. 2 (June 10, 2009), *available at* <http://register.consilium.europa.eu/pdf/en/08/st16/st16332-re02.en08.pdf> (setting out guidelines for European Union human rights external relations).

³¹² *E.g.*, ICCPR, art. 9.

³¹³ *E.g.*, ICCPR, art. 7; Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, G.A. Res. 39/46, U.N. Doc. A/39/51 (1984) (*entered into force* June 26, 1987).

³¹⁴ The U.S. ratified the ICCPR on June 8, 1992. *See* United Nations Treaty Collection, Status of Ratifications, Reservations, and Declarations, *available at* http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en. Although the United States Senate declared the ICCPR to be non self-executing, meaning that U.S. courts could enforce its provisions only pursuant to the passage of specific domestic legislation, by ratifying the treaty, the U.S. bound itself as a matter of international law to respect these rights.

³¹⁵ *See, e.g.*, Report to the U.N. General Assembly of the Special Rep. of the Secretary-General on Human Rights Defenders ¶ 6, U.N. Doc. A/62/225 (Aug. 13, 2007) *available at* <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>.

³¹⁶ *See* Vienna Convention on the Law of Treaties, art. 27, 1155 U.N.T.S. 331 (May 23, 1969) (*entered into force* Jan. 27, 1980) (a state cannot invoke internal law to justify failure to perform treaty obligations); U.N. Human Rights Comm., General Comment No. 34, *Article 19: Freedoms of Opinion and Expression* ¶ 7, U.N. Doc. CCPR/C/GC/34

addition, international law requires US courts to interpret domestic law in line with the ICCPR.³¹⁷ Furthermore, as recognized by the Inter-American Commission on Human Rights, the United States, as an Organization of American States (OAS) member that has ratified the OAS Charter, is bound to respect the rights protected under the American Declaration of the Rights and Duties of Man.³¹⁸

The jurisprudence and reports of officials and bodies tasked with interpreting and applying human rights law – including international committees (e.g. the UN Human Rights Committee, the body charged with interpreting authoritatively the ICCPR), inter-governmental organizations (e.g. the Organization for Security and Cooperation in Europe (OSCE), an organization of 56 states, including the US, which prepared the most comprehensive guidelines on international assembly law), regional human rights courts and commissions (e.g. the European Court of Human Rights, the Inter-American Court and Commission of Human Rights, the African Commission on Human and Peoples’ Rights), experts appointed by international and regional intergovernmental organizations (e.g. UN Special Rapporteurs and Special Representatives, and Inter-American Commission and African Commission Special Rapporteurs), and domestic courts applying international law – are referred to throughout this chapter as persuasive authority on the content and interpretation of protest rights under international law.

2. Protest, Assembly, and Expression Rights are Foundational to Democracy

Protest, assembly and expression rights are recognized as vital elements of democracy, and necessary for democratic participation, personal and social development, the expression and exchange of ideas, and for protecting other core rights.

Protest Rights are Essential for Democracy and Individual Development

(Sept. 12, 2011), *available at* <http://www2.ohchr.org/english/bodies/hrc/comments.htm> [hereinafter General Comment No. 34] (“The obligation to respect freedoms of opinion and expression is binding on every State party as a whole. All branches of the State (executive, legislative and judicial) and other public or governmental authorities, at whatever level—national, regional or local—are in a position to engage the responsibility of the State party.”); U.N. Human Rights Comm., General Comment No. 31, *The Nature of the General Legal Obligation Imposed on States Parties to the Covenant* ¶ 4, U.N. Doc. CCPR/C/21/Rev/1/Add.13, (March 29, 2004) [hereinafter General Comment No. 31] (“The executive branch that usually represents the State Party internationally...may not point to the fact that an action incompatible with the [ICCPR] was carried out by another branch of government as a means of seeking to relieve the State Party from the responsibility for the action.”). The U.S. entered the following understanding when it ratified the ICCPR: “That the United States understands that this Covenant shall be implemented by the Federal Government to the extent that it exercises legislative and judicial jurisdiction over the matters covered therein, and otherwise by state and local governments; to the extent that state and local governments exercise jurisdiction over such matters, the Federal Government shall take measures appropriate to the Federal system to the end that the competent authorities of the state or local governments may take appropriate measures for the fulfillment of the Covenant.” See Martha F. Davis, *Realizing Domestic Social Justice Through International Human Rights: Part 1: The Spirit of Our Times: State Constitutions and International Human Rights*, 30 N.Y.U. REV. L & SOC. CHANGE 359, 361-64 (2006) (citing 138 Cong. Rec. 8068, 8071 (1992)).

³¹⁷ See General Comment No. 34 at ¶¶ 7-8 (stating that States parties to the ICCPR are required to ensure that the right to free expression be given effect in the domestic law of the State and that this obligation extends to judicial authorities); General Comment No. 31 at ¶ 4. Under U.S. law, the “Charming Betsy Canon” provides that ambiguous domestic laws should be interpreted to comply with international law. See THE OPPORTUNITY AGENDA, LEGAL AND POLICY ANALYSIS: HUMAN RIGHTS IN STATE COURTS 2011 4 (2011), *available at* http://www.ncdsv.org/images/OppAgenda_HumanRightsInStateCourts_FullReport_8-2011.pdf (citing Murray v. Schooner Charming Betsy, 6 U.S. 64, 118 (1804) (“It has also been observed that an act of Congress ought never to be construed to violate the law of nations if any other possible construction remains”)).

³¹⁸ See Jessica Gonzales and others v. United States, Case 1490-05 (Admissibility Report), Inter-Am. Comm’n H.R., Report No. 52/07, ¶ 37 (and cites therein) (July 24, 2007).

In 1929, US Supreme Court Justice Brandeis famously mounted a stirring defense of the freedoms of expression and assembly:

Those who won our independence believed that ... freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth; ... that the greatest menace to freedom is an inert people; that public discussion is a political duty, and that this should be a fundamental principle of the American government. ... that it is hazardous to discourage thought, hope and imagination; that fear breeds repression; that repression breeds hate; that hate menaces stable government; that the path of safety lies in the opportunity to discuss freely supposed grievances and proposed remedies ... Believing in the power of reason as applied through public discussion, they eschewed silence coerced by law -- the argument of force in its worst form. ... they amended the Constitution so that free speech and assembly should be guaranteed.³¹⁹

Governments, inter-governmental organizations, UN-appointed experts, scholars, international commissions, and international, regional and national courts have consistently characterized the freedoms of expression and assembly as of “paramount importance”,³²⁰ “fundamental”,³²¹ and “essential pillars”³²² for democratic society.

³¹⁹ *Whitney v. California*, 274 U.S. 357 (1927) (Brandeis, J.). Justice Brandeis’ views have been cited with approval in the assembly jurisprudence of other constitutional courts. *See, e.g.*, Christine Mulundika and 7 Others v. The People (1995, unreported), [SC] (Zam.), available at <http://www.saflii.org/zm/cases/ZMSC/1996/26.pdf>; *The State v. The Ivory Trumpet Publishing Co. Ltd and others* [1984] 5 NCLR 736 (Nigeria).

³²⁰ JOHANN BAIR, *THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS AND ITS (FIRST) OPTIONAL PROTOCOL: A SHORT COMMENTARY BASED ON VIEWS, GENERAL COMMENTS AND CONCLUDING OBSERVATIONS BY THE HUMAN RIGHTS COMMITTEE* 89 (2005) (citing, *inter alia*, the following case: *Laptsevich v. Belarus*, Human Rights Comm., Comm’n No. 780/97, U.N. Doc. CCPR/C/68/D/780/1997 (March 20, 2000) (“right to freedom of expression is...the cornerstone in any free and democratic society.”)); *see also* Claudio Grossman, *Freedom of Expression in the Inter-American System for the Protection of Human Rights*, 7 ILSA J. INT’L & COMP. L. 619, 619 (2001) (“Freedom of expression is one of democracy’s fundamental values.”); Report to the U.N. General Assembly of the Special Rep. of the Secretary-General on Human Rights Defenders ¶ 6, U.N. Doc. A/62/225 (Aug. 13, 2007) available at <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf> (describing protests as an “essential and constituent element of democracies.”); *Regina v. British Broadcast Corporation ex parte ProLife Alliance* [2003] UKHL 23 [2004] 1 AC 185 (appeal taken from Eng.) ¶ 8 (“Freedom of political speech is a freedom of the very highest importance in any country which lays claim to be a democracy. Restrictions on this freedom need to be examined rigorously by all concerned, not least the Courts.”); HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST* ¶ 1, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (describing the rights as a cornerstone for democracy).

³²¹ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 50, OEA/Ser.L/V/II.124, Doc. 5, Rev. 1 (Mar. 7, 2006); *see also* *Feldek v. Slovakia*, Judgment (Merits and Just Satisfaction), App. No. 29032/95 ¶ 72, Eur. Ct. Hum. Rts. (July 12, 2001), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59588> (“freedom of expression constitutes one of the essential foundations of a democratic society.”); *Ziliberberg v. Moldova*, App. No. 61821/00 ¶ 2, Eur. Ct. Hum. Rts. (May 4, 2004, unreported) (“the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society.”); *Kuznetsov v. Russia*, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 39, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066> (the rights are “fundamental” and foundational); European Commission for Democracy Through Law (Venice Commission), *Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations on the Republic of Armenia* ¶ 8, adopted by the Venice Commission, 64th Plenary Session, October 21-22, 2005, Opinion No. 290/2004, CDL-AD (2005) 035 (Nov. 2, 2005) (the right to assemble is a “fundamental right.”) (The Venice Commission is an inter-governmental organization of 58 member states. The U.S. is an observer state.); *see also* THOMAS DAVID JONES, *HUMAN RIGHTS: GROUP DEFAMATION, FREEDOM OF EXPRESSION AND THE LAW OF NATIONS* 34 (1998) (describing the freedom of expression as universal); INTERNATIONAL BAR ASSOCIATION, *PROSPERITY VERSUS INDIVIDUAL RIGHTS? HUMAN RIGHTS, DEMOCRACY AND THE RULE OF LAW IN SINGAPORE* 6 (2008) (describing freedom of expression and assembly as basic norms); CENTER FOR LAW AND DEMOCRACY, *A LEGAL ANALYSIS OF THE DETENTION OF FIVE BURMESE JOURNALISTS* 1 (2011) (“Freedom of expression is, as international courts and commentators have repeatedly reaffirmed, a widely recognized and foundational human right.”); Navanethem Pillay, *Freedom of Speech and Incitement to Criminal Activity: A Delicate Balance*, 14 NEW ENG. J. INT’L & COMP. L. 203, 203 (2008) (freedom

The indispensable and intertwined role of these rights in both individual and democratic development is widely recognized. The rights have been described as “an essential foundation of democratic society and one of the basic conditions for its progress and for each individual’s self-fulfillment”,³²³ “integral to human dignity”,³²⁴ and “an essential prerequisite not only for personal growth but also for a pluralistic democratic society.”³²⁵

Protests Promote Positive Social Change and Protect other Core Rights

Protests are especially crucial forms of expression and assembly because they enable individuals to express dissent, hold their governments to account, and advocate for needed reforms. As the UN Special Rapporteur on extrajudicial, summary or arbitrary executions noted in a 2011 report, some “of the key historical changes during the last century, and earlier, have been brought about by the masses taking to the streets.”³²⁶ The UN Special Representative of the Secretary-General on human rights defenders has also affirmed the role of protests in effecting positive social change:

Historically, protests and demonstrations have been the engines of change and major contributing factors to advances in human rights. Unknown defenders as well as activists of high caliber have led and inspired protest movements in all regions and historical epochs, paving to achievements in human rights... the protests of human rights defenders all over the world have been high-water marks of history.³²⁷

The Inter-American Commission on Human Rights has recognized that expression and assembly rights, when exercised in the form of public protests are particularly “critical to the consolidation of democratic life in societies” and contain a “keen social interest”.³²⁸

of expression is a “fundamental right recognized in international law and entrenched in most national constitutions.”).

³²² *Ivcher-Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 152 (Feb. 6, 2001) (citing to a series of European Court of Human Rights cases protecting the freedom of expression).

³²³ *Steel and Others v. United Kingdom*, 28 Eur. Ct. H.R. 603, ¶ 101 (1998).

³²⁴ ALEX CONTE & RICHARD BURCHILL, *DEFINING CIVIL & POLITICAL RIGHTS: THE JURISPRUDENCE OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE* 85 (2009); *see also* Brokdorf, *Entscheidungen Des Bundesverfassungsgerichts [BVerfGE] [Federal Constitutional Court]* May 14, 1985, 69 BVerfGE 315, 345 (1985), German Constitutional Court (“The demonstrator, by expressing his opinion when physically present, in full public view, without the interposition of the media, also displays his personality in a direct way.”).

³²⁵ WALTER KÄLIN & JÖRG KÜNZLI, *THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION* 467 (2009); *see also* ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY* 23, ¶ 3, n.16 (2d ed. 2010) (the rights are of “fundamental importance for the personal development, dignity and fulfillment of every individual and for the progress and welfare of society.”); *The Law Office of Ghazi Suleiman v. Sudan*, Comm’n No. 228/99, ¶ 41, Afr. Comm’n on Hum. and Peoples’ Rts. (2003), available in Afr. Comm’n on Hum. & Peoples’ Rts., *Sixteenth Annual Activity Report*, 48 (2003) (agreeing with the jurisprudence of the European Court of Human Rights and the Inter-American Court, and finding that the freedom of expression is “vital to an individual’s personal development, his political consciousness, and participation in the conduct of public affairs in his country.”).

³²⁶ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *First Rep. on Extrajudicial, Summary, or Arbitrary Executions* ¶ 14, Hum. Rts. Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns).

³²⁷ Special Rep. of the Secretary-General on Human Rights Defenders, Report to the U.N. General Assembly of the Special Rep. of the Secretary-General on Human Rights Defenders ¶ 4, U.N. Doc. A/62/225 (Aug. 13, 2007) *available at* <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>.

³²⁸ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 60, OEA/Ser.L/V/II.124, doc. 5, rev. 1 (Mar. 7, 2006); *see also* Inspector-General of Police v. All Nigeria Peoples Party and Others [2007] 18 NWLR (Pt. 1066), ¶ 32, 34 (Nigeria) (“The right to demonstrate and the right to protest on matters of public concern are rights which are in the public interest and that which individuals possess...our legislature must guard these rights jealously as they are part of the foundation upon which the government itself rests.”); YoSoy132, *First Communiqué by the Coordinators of the Movement YoSoy132 (Manifesto)*, full text *available at* <http://takethesquare.net/2012/06/03/first-communicue-by-the-coordinators-of-the-movement-yosoy132-manifesto/> (explaining the demands of the Mexican YoSoy132 movement, the communiqué states that they “believe that a necessary condition to correct [inequality, poverty, violence] is to empower the common citizen through

As recognized by the Inter-American Commission on Human Rights, the European Court of Human Rights and the African Commission on Human and Peoples' Rights – full respect for expression and assembly serves as a key protection for other rights; their exercise helps to guarantee respect for other rights by “assuring their observance”.³²⁹ In a 2011 report addressing expression and assembly rights in detail, the Inter-American Commission on Human Rights noted that peaceful protest is “essential for engaging in political and social criticism of authorities’ activities,”³³⁰ and serves an:

[E]ssential social interest in guaranteeing the proper functioning of the democratic system. Thus, expressions against the government’s proposed laws or policies, far from being an incitement to violence, are an integral part of any pluralistic democracy.³³¹

The Commonwealth Secretariat, an inter-governmental organization of 54 states from Africa, Asia, the Americas, the Caribbean, Europe, and the South Pacific stated in a 2002 report on international expression and assembly law:

From the mass protests in connection with the right to self-determination by colonized peoples, to civil rights protests, to protests against apartheid, it is clear that the right to demonstrate and protest has been historically vindicated as being part of the democratic landscape of countries.³³²

Protests Elevate Marginalized Voices

For those whose interests are otherwise poorly represented or marginalized, public protests are particularly crucial:

information, because it permits us to make better political, economic, and social decisions. Access to information allows citizens to demand and criticize, in a reasoned manner, their government, policy makers, businessmen, and society itself. That is why the main demand of YoSoy132 is the right to have access to information and the right of freedom of expression...both of these are essential to form a conscientious and participatory citizenry.”)

³²⁹ Santiago A. Canton, *The Role of the OAS Special Rapporteur for Freedom of Expression in Promoting Democracy in the Americas*, 56 U. MIAMI L. REV. 307, 308 (2002); see also Viviana Krsticevic, *How Inter-American Human Rights Litigation Brings Free Speech to the Americas*, 4 SW. J.L. & TRADE AM. 209, 214 (1997) (the freedom of expression acts “as a guarantee against the violation of other rights.”); FRANCISO FORREST MARTIN, INTERNATIONAL HUMAN RIGHTS LAW AND PRACTICE: CASES, TREATIES AND MATERIALS 154 (1997) (describing the freedom of expression as having “instrumental value” in ensuring that other rights are protected); COMMONWEALTH SECRETARIAT, FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION: BEST PRACTICE 7 (2002) (“Freedom of expression, assembly and association have always been regarded as critical and a necessary pre-condition for the advancement of democracy and for social, economic and political development.”); Article 19, *Declaration of Principles on Freedom of Expression in Africa* Preamble, adopted by Afr. Comm’n on Hum. & Peoples’ Rts., 32d Ordinary Session (October 2002), available at <http://www.unhcr.org/refworld/docid/4753d3a40.html>

(the freedom of expression is “a cornerstone of democracy” and a “means of ensuring respect for all human rights and freedoms.”); Surek and Ozdemir v. Turkey, Judgment (Merits and Just Satisfaction), App. Nos. 23927/94 and 24277/94 ¶ 60, Eur. Ct. Hum. Rts. (July 8, 1999), available at

<http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58278> (“In a democratic system, the actions or omissions of the Government must be subject to the close scrutiny not only of the legislative and judicial authorities but also of public opinion.”)

³³⁰ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 129, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006).

³³¹ Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 106, OEA/Ser.L/V/II., doc. 66 (Dec. 31, 2011); see also Ivcher-Bronstein v. Peru, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 150 (Feb. 6, 2001) (citing with approval to Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 19 American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5 (Nov. 13, 1985) (democracy is not “conceivable without free debate and the possibility that dissenting voices be fully heard.”).

³³² COMMONWEALTH SECRETARIAT, FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION: BEST PRACTICE (2002).

For many people, participation in public meetings or less formal forms of protest—marches and other demonstrations on the streets, picketing, and sit-ins—is not just the best, but the only effective means of communicating their views. . . . Taking part in a public protest . . . enables people without media access to contribute to public debate.³³³

In a key case on the freedom of assembly, the German Constitutional Court provided a powerful articulation of this aspect of protests:

[D]emonstrations are the communal physical manifestation of convictions. In them the participants on the one hand experience confirmation of these convictions communally with others. On the other hand they outwardly – through their mere presence, the way they appear and associate with each other or the choice of place – take up a position in the real sense of those words and testify to their point of view ... Large associations, wealthy donors and the mass media can exercise considerable influence, whilst the citizen feels himself to be powerless by comparison. In a society in which direct access to the media and the chance of expressing oneself through them is limited to a few, there only remains to the individual, besides organized co-operation in parties and associations in general, collective exertion of influence by using the freedom of assembly for demonstrations... Demonstrative protest can in particular be necessary if the representative organs do not recognize possible abuses [or] accept them out of regard to other interests.³³⁴

Beyond Dissent: the Role of Assemblies in Socio-Political Formation

Public protests, and particularly open political assemblies, also serve crucial purposes beyond the expression of dissent or the direct communication of already formulated shared views. Public political assemblies may not necessarily be “protests”, in the sense of protesting for or against an issue or policy. They may also serve democracy by bringing individuals together to speak directly to each other, exchange ideas, confront ideological and political difference, enable community formation, and encourage the development of engaged and informed citizens. They allow the emergence of new ideas, create the physical and discursive space necessary for political debate on issues of public interest, and the opportunity for the development of individual and social consciousness-raising. By engaging in public discussions with others about political issues over time, individuals are able to draw connections between different concerns, grievances, and proposals.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association stressed this aspect of assembly in his first expert report to the UN Human Rights Council: “Assemblies play a vibrant role in mobilizing the population and formulating grievances and aspirations ... and, importantly, influencing State’s public policy.”³³⁵ The Inter-American Commission on Human Rights similarly recognized that expression and assembly rights permit people to “vindicate their rights, make known their petitions, and foster the search for changes or solutions to the problems that affect them.”³³⁶

³³³ ERIC BARENDT, FREEDOM OF SPEECH 268 (2d ed., 2005) (giving anti-war protests as an example of the importance of the freedom of assembly).

³³⁴ *Brokdorf* (1985), German Constitutional Court, at 345 (internal citations omitted).

³³⁵ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 24, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

³³⁶ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 51, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006).

Through political assemblies, individuals can come to experience themselves as political actors directly participating in their democracy, and have the opportunity to form, individually and with others, views about current socio-economic conditions and proposals for reforms to current systems. The freedom of assembly is significant in creating the space to form political will:

The basic significance of freedom of assembly is particularly evident when the special nature of the process of formation of political will in a democratic community is considered ... in a democracy the formation of opinion must proceed from the people to the organs of the state and not the other way round. The right of the citizen to participate in forming political will does not only express itself in voting in elections, but also in exerting influence on the continual process of formation of political opinion, which in a democratic state must take place freely, openly, without regulation and in principle free from state intervention ... ³³⁷

Because of their essential role in securing democracy and positive social change, the exercise of freedom of expression and assembly rights through peaceful protests and political assemblies is provided broad protection in international human rights law.

3. Scope and Content of Protest Rights

Expression and Assembly Protections

Overlapping protections. States have a duty under international law not to interfere with assembly and expression rights, and also a positive duty to protect the rights.³³⁸ The core freedoms of expression and assembly overlap significantly in the protections they provide,³³⁹ and require states to protect and promote a wide range of protest, expressive, and

³³⁷ *Brokdorf* (1985), German Constitutional Court, at 346 (internal citations omitted).

³³⁸ General Comment No. 31 at ¶¶ 6-7, 10 (ICCPR obligations are both “positive and negative in nature,” and states must respect and ensure the rights); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 27, Human Rights Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (the state must fulfill “its positive obligation to facilitate the exercise of this right,” and noting at ¶ 33 that the state must protect protesters from others who aim to disrupt assemblies); *Baczowski and Others v. Poland*, Judgment (Merits), App. No. 1543/06 ¶ 64, Eur. Ct. Hum. Rts. (May 3, 2007), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-80464> (“A genuine and effective respect for freedom of association and assembly cannot be reduced to a mere duty on the part of the State not to interfere...[t]here may thus be positive obligations to secure the effective enjoyment of these freedoms.”); *Plattform “Arzte Fur Das Leben” v. Austria*, Judgment (Merits), App. No. 10126/82 ¶ 32, Eur. Ct. Hum. Rts. (June 21, 1988), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57558>; *Djavit An v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 20652/92 ¶ 57, Eur. Ct. Hum. Rts. (Feb. 20, 2003), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60953>; HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 3, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (quoting submission from the Government of the United Kingdom).

³³⁹ The two rights overlap significantly, and cannot always be separated, particularly where applied to protests. See, e.g., *Kuznetsov v. Russia*, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 23, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066>. In the context of assemblies, the European Court of Human Rights has treated the freedom of assembly as the *lex specialis*, but interpreting it in the light of the freedom of expression. *Kuznetsov v. Russia*, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 23, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066>. They have also been described as interdependent. ARTICLE 19, FREEDOM OF ASSOCIATION AND ASSEMBLY UNIONS, NGOS AND POLITICAL FREEDOM IN SUB-SAHARAN AFRICA 2 (2001); see also ERIC BARENDT, FREEDOM OF SPEECH 270, 292 (2d ed. 2005) (noting that the jurisprudence of many countries and international tribunals includes “expressive conduct” within freedom of expression protections); *International Pen and Others v. Nigeria* ¶ 110, Afr. Comm’n on Hum. & Peoples’ Rts., Comm’n. Nos. 137/94, 139/94, 154/96 and 161/97 (1998) (noting that there is a “close relationship” between the freedoms of expression and assembly); General Comment No. 34 at ¶ 3 (“freedom of expression is integral to the enjoyment of the rights to freedom of assembly and association.”).

assembly activities. Protests and political assemblies are often simultaneously protected as both assemblies and forms of protected expression, with participants also engaging in specifically protected expressive acts (e.g. communication between individuals, verbal chants, the display of signs).

As made clear by the UN Human Rights Committee, the body charged with interpreting authoritatively the ICCPR, the freedom of expression includes the right to seek, receive, and impart information and ideas through any medium.³⁴⁰ It has both an individual and social aspect, and thus includes the right of individuals and social groups to “voice their collective views,” including through engaging in “mass demonstrations of various kinds.”³⁴¹ The freedom of expression applies “with regard to the dissemination of information and ideas that are received favorably or considered inoffensive or indifferent, [and] also with regard to those that offend, are unwelcome or shock the State or any sector of the population.”³⁴² The Inter-American Court, European Court, and African Commission have also stressed that political discussion and “discussion of matters of public interest” are particularly protected.³⁴³ The freedom of assembly similarly protects “the right to share opinions”, the gathering of individuals together, and protects the coordination of “action plans, whether at assemblies or public demonstrations.”³⁴⁴

Protected activities. The freedoms of expression and assembly protect a wide range of activities, including: public assemblies and gatherings, protest camps, private meetings, processions, static meetings, marches, vigils, mass demonstrations, pickets, sit-ins, flash mobs, mass bicycle processions, chants and other verbal expression, the holding of posters and banners and other visual forms of communication, distribution of leaflets or other publications, and the collection of signatures.³⁴⁵

³⁴⁰ General Comment No. 34 at ¶ 11; COMMONWEALTH SECRETARIAT, FREEDOM OF EXPRESSION, ASSEMBLY AND ASSOCIATION: BEST PRACTICE 9-10 (2002).

³⁴¹ Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, *Second Annual Rep. on the Promotion and Protection of the Right to Freedom of Opinion and Expression* ¶ 29, U.N. Doc. A/HRC/14/23 (Apr. 20, 2010) (by Frank LaRue); see also MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 445 (N. P. Engel, ed., 2d ed. 2005) (“any other media of his choice” includes assemblies and demonstrations); Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 78, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006); see also *Ivcher-Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 146 (Feb. 6, 2001) (“freedom of expression has both an individual and a social dimension.”).

³⁴² *Ivcher-Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 152 (Feb. 6, 2001); *Feldek v. Slovakia*, Judgment (Merits and Just Satisfaction), App. No. 29032/95 ¶ 72, Eur. Ct. Hum. Rts. (July 12, 2001), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59588>. Limited exceptions to expression rights exist where, for example, the speech is defamatory or incites violence. See MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 437-480 (N. P. Engel, ed., 2d ed. 2005).

³⁴³ *Ivcher-Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 74, ¶ 155 (Feb. 6, 2001); see also *Kuznetsov v. Russia*, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 47, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066> (it has been the court’s “constant approach to require very strong reasons for justifying restrictions on political speech or serious matters of public interest.”); *Feldek v. Slovakia*, Judgment (Merits and Just Satisfaction), App. No. 29032/95 ¶ 74, Eur. Ct. Hum. Rts. (July 12, 2001), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59588> (“there is little scope...for restrictions on political speech”); The Law Office of Ghazi Suleiman v. Sudan, Comm. No. 228/99, ¶¶ 52-53, Afr. Comm’n on Hum. and Peoples’ Rts. (2003), available in Afr. Comm’n on Hum. & Peoples’ Rts., Sixteenth Annual Activity Report, 48 (2003) (finding that speech directed towards promoting human rights is of special value and that “speech that contributes to political debate must be protected.”).

³⁴⁴ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 52, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006); see also *Patyi and Others v. Hungary*, App. No. 5529/05 ¶ 37, Eur. Ct. Hum. Rts. (Oct. 7, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88748>.

³⁴⁵ See, e.g., Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 24, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (listing protected assemblies); General Comment No. 34 at ¶¶ 11-12 (listing protected forms of expression and citing to relevant Human Rights Committee jurisprudence); *Kivenmaa v. Finland* ¶ 9.3, U.N. Hum.

Protected use of public space. Assemblies and protests are protected in public places that everyone has a right to use, including “public parks, squares, streets, roads, avenues, sidewalks, pavements and footpaths”.³⁴⁶ In one of the most comprehensive international legal analyses of the freedom of assembly, the OSCE stated:

Participants in public assemblies have as much a claim to use [public] sites for a reasonable period as anyone else. Indeed, public protest, and freedom of assembly in general, should be regarded as equally legitimate uses of public space as the more routine purposes for which public space is used (such as commercial activity or for pedestrian and vehicular traffic).³⁴⁷

Public space is “not only for circulation, but also a space for participation.”³⁴⁸ In a series of cases, the European Court of Human Rights has affirmed that:

[A]ny demonstration in a public place inevitably causes a certain level of disruption to ordinary life, including disruption of traffic ... it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly ... it not to be deprived of all substance.”³⁴⁹

Rts. Comm., (412/90), CCPR/C/50/D/412/1990 (1994); 1 IHRR 88 (1994), *available at* <http://www1.umn.edu/humanrts/undocs/html/vws412.htm>

(finding that an individual exercised their right to expression when they raised a banner critical of a visiting head of state’s human rights record); Kuznetsov v. Russia, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 35, Eur. Ct. Hum. Rts. (Oct. 23, 2008), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066> (“the right to freedom of assembly covers both private meetings and meetings on public thoroughfares, as well as static meetings and public processions.”); Djavit An v. Turkey, Judgment (Merits and Just Satisfaction), App. No. 20652/92 ¶ 56, Eur. Ct. Hum. Rts. (Feb. 20, 2003), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60953>; HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 18, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (describing the kinds of peaceful assemblies protected and citing to the relevant jurisprudence); MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 486 (N. P. Engel, ed., 2d ed. 2005) (listing different types of assemblies). The wearing of a mask “for expressive purposes” should not be prohibited so long as it “is not worn for the purpose of preventing the identification of a person whose conduct creates probable cause for arrest and so long as the mask does not create a clear and present danger of imminent unlawful conduct.” ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 58, ¶ 98 (2d ed. 2010).

³⁴⁶ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 31, ¶ 19 (2d ed. 2010).

³⁴⁷ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 31, ¶ 20 (2d ed. 2010). The U.N. Special Rapporteur on the rights to freedom of peaceful assembly and of association, Mr. Maina Kiai, in his first report to the U.N. Human Rights Council in 2012, made extensive reference to the OSCE Guidelines, and affirmed their articulation of the relevant human rights law and good practice. The Special Rapporteur also specifically concurred with the OSCE’s statement cited in the text above. Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 40, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (“the free flow of traffic should not automatically take precedence over freedom of peaceful assembly.”).

³⁴⁸ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 56, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006); (citing to the Tribunal Constitucional (Spanish Constitutional Court), Judgment 66/1995, Leaf (L.C.) 3, (May 8, 1995)).

³⁴⁹ Kuznetsov v. Russia, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 44, Eur. Ct. Hum. Rts. (Oct. 23, 2008), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066> (and cases cited therein); *see also* Bici v. Turkey, Judgment (Merits and Just Satisfaction), App. No. 30357/05 ¶¶ 56-57, Eur. Ct. Hum. Rts. (May 27, 2010), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98909> (finding that the forced dispersal of a peaceful assembly was “disproportionate and unnecessary for the prevention of disorder”); Patyi and Others v. Hungary, App. No. 5529/05 ¶ 43, Eur. Ct. Hum. Rts. (Oct. 7, 2008), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88748>.

In a case in which officials refused to let protesters demonstrate on a sidewalk across from a senior politician's home on the basis that the protests would have inhibited pedestrian and vehicular traffic, the European Court of Human Rights held that the officials "failed to strike a fair balance between the rights of those wishing to exercise their freedom of assembly and those others whose freedom of movement may have been frustrated temporarily, if at all."³⁵⁰

Peaceful assemblies and isolated violence. The freedoms of expression and assembly protect peaceful assemblies. "Peaceful" includes "conduct that may annoy or give offence to persons opposed to the ideas or claims that it is seeking to promote."³⁵¹ Passive resistance, including civil disobedience in the form of sit-ins and blockades, is peaceful.³⁵² Demonstrations are not peaceful where "the organizers and participants have violent intentions which result in public disorder."³⁵³ If isolated or sporadic violence takes place within an otherwise peaceful assembly, *the entire assembly does not lose its peaceful character*.³⁵⁴ An individual who remains peaceful does not lose their right to assembly as a result of the sporadic violence of others.³⁵⁵ The police should "be exceptionally slow to prevent or interfere with a peaceful demonstration simply because of the violent actions of a minority,"³⁵⁶ and should instead take appropriate enforcement action against the responsible individuals.³⁵⁷

Restrictions on Assembly Rights are Permitted only Under Limited and Exceptional Circumstances

International law is clear that only under limited and exceptional circumstances may governments lawfully impose restrictions on these rights.

³⁵⁰ Patyi and Others v. Hungary, App. No. 5529/05 ¶¶ 40, 42, Eur. Ct. Hum. Rts. (Oct. 7, 2008), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88748>; cf. G v. The Federal Republic of Germany, Inadmissible, App. No. 13079/97, "The Law" ¶ 2, Eur. Ct. Hum. Rts. (Mar. 6, 1989), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1054> (finding lawful the applicant's conviction for blocking a road, where a group carried out repeated sit-ins intending to fully block traffic).

³⁵¹ See, e.g., ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 33-34, ¶ 26 (2d ed. 2010).

³⁵² ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 33-34, ¶ 26 (2d ed. 2010); MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 487 (N. P. Engel, ed., 2d ed. 2005) (also noting that participants showing up at protests with mere defensive means, such as helmets, does not deprive an assembly of its peaceful character); WALTER KALIN AND JORG KUNZLI, THE LAW OF INTERNATIONAL HUMAN RIGHTS PROTECTION 475 (2009); G v. The Federal Republic of Germany, Inadmissible, App. No. 13079/97, "The Law" ¶ 2, Eur. Ct. Hum. Rts. (March 6, 1989), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1054> (finding that peaceful assembly included a sit-in to block a road where the demonstrators were not actively violent in the course of the demonstration).

³⁵³ G v. The Federal Republic of Germany, Inadmissible, App. No. 13079/97, "The Law" ¶ 2, Eur. Ct. Hum. Rts. (Mar. 6, 1989), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-1054>; see also Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 25, Human Rights Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

³⁵⁴ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 33-34, ¶ 26 (2d ed. 2010); see also Brokdorf (1985), German Constitutional Court, at 316 (holding that when a minority of protesters cease to demonstrate peacefully, the right to free assembly for the remaining peaceful protesters is still protected. The police must exhaust all reasonable measures to control the minority of non-peaceful protesters before infringing on the rights of the peaceful majority.).

³⁵⁵ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 25, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

³⁵⁶ HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 23, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009)

³⁵⁷ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 71, ¶ 139 (2d ed. 2010).

Basis for limited exceptions. It is because of the “essential nature” of the freedom of assembly and “its close relationship with democracy” that restrictions are only permitted for “convincing and compelling” reasons.³⁵⁸ The social importance of protests means that governments have “very narrow margins for justifying restrictions to the right.”³⁵⁹ Restrictions on assembly must be construed narrowly so that the rights are “practical and effective” not “theoretical or illusory.”³⁶⁰

Test of legality, proportionality, necessity, legitimate purpose. Any restriction on the freedoms of assembly and expression must conform to the principle of legality and be proportionate and necessary to achieve a legitimate aim.³⁶¹ This test creates a “high threshold”:³⁶²

Whilst protests may be disruptive or inconvenient, the presumption should be in favor of protests taking place without state interference, unless compelling evidence

³⁵⁸ Kuznetsov v. Russia, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 39, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066>; see also Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders* ¶ 107, OEA/Ser.L/V/II, doc. 66 (Dec. 31, 2011) (“In view of the importance of social protest in a democratic system, the IACHR reiterates that the State has a limited framework to justify any restriction in this regard...restrictions must be reasonable in order to ensure that the demonstrations are peaceful”, and restrictions must be legal, necessary and proportionate.).

³⁵⁹ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 60, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006); see also Djavit An v. Turkey, Judgment (Merits and Just Satisfaction), App. No. 20652/92 ¶ 56, Eur. Ct. Hum. Rts. (Feb. 20, 2003), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60953> (“the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society. Thus, it should not be interpreted restrictively.”); WILLIAM M. BERENSON, FREEDOM OF EXPRESSION IN THE INTER-AMERICAN SYSTEM 10 (2007), www.oas.org/legal/english/docs/freedom_of_expression_8707.doc (the IACHR Court “has taken a very restrictive view of a government’s authority to limit freedom of expression.”).

³⁶⁰ European Commission for Democracy Through Law (Venice Commission), *Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations on the Republic of Armenia* ¶ 13, adopted by the Venice Commission, 64th Plenary Session, October 21-22, 2005, Opinion No. 290/2004, CDL-AD (2005) 035 (Nov. 2, 2005). The Venice Commission is an inter-governmental organization of 58 member states. The U.S. is an observer state. See also HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 3, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (quoting submission from the Government of the United Kingdom that “there should be no unnecessary restrictions on people’s rights to peaceful protest.”).

³⁶¹ General Comment No. 34 at ¶¶ 21-35; Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 40, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (“any restrictions imposed must be necessary and proportionate to the aim pursued.”); Gallastegui v. Westminster City Council, [2012] EWHC (Comm) 1123, [59] (Eng.) (applying Articles 10 and 11 of the ECHR: “some restriction...can exceptionally be justified if there is an important and cogent legislative object and if the means used...go no further than necessary.”); Kuznetsov v. Russia, Judgment (Merits and Just Satisfaction), App. No. 10877/04 ¶ 37, Eur. Ct. Hum. Rts. (Oct. 23, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-89066> (an interference will constitute a breach...unless it is “prescribed by law,” pursues one or more legitimate aims...and is “necessary in a democratic society” for the achievement of those aims.); Feldek v. Slovakia, Judgment (Merits and Just Satisfaction), App. No. 29032/95 ¶¶ 52-90 (July 12, 2001), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59588>; Inter-Am. Comm’n on Human Rights Special Rapporteur for Freedom of Expression, *Inter-American Legal Framework Regarding the Right to Freedom of Expression* ¶ 67, OEA/Ser.L/V/II, CIDH/RELE/INF. 2/09 (Dec. 30, 2009) (describing the limited conditions for restriction); Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism (Arts. 13 and 29 American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5, ¶ 59 (Nov. 13, 1985) of November 13, 1985; Malawi Afr. Ass’n v. Mauritania ¶¶ 108-111, Comm. No. 54/91 (Afr. Comm’n Hum. & Peoples’ Rts. 2000), reprinted in Thirteenth Ann. Activity Rep. of the Afr. Comm’n on Hum. and Peoples’ Rts., 1999-2000, Annex VII (finding a breach of the freedom of assembly where the Government had not shown that its restrictions on assembly rights had any foundation in the interests of national security, the safety, health, ethics or the rights and freedoms of others).

³⁶² HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 66, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009).

can be provided of legitimate reasons for any restrictions and those restrictions go no further than is strictly necessary to achieve their aim.

“Legality” requires that the law be formulated with “sufficient precision to enable the citizen to regulate [his or her] conduct” and to “foresee, to a degree that is reasonable in the circumstances, the consequences which a given action may entail”.³⁶³ Unduly broad police discretionary powers may breach the principle of legality.³⁶⁴

The ICCPR permits restrictions on protest rights only for the following limited legitimate grounds: national security, public safety, public order, the protection of public health or morals, or the protection of the rights of others.³⁶⁵

- *National security* restrictions may only be invoked to protect the existence of the nation against force or the threat of force and cannot be invoked in response to “merely local or relatively isolated threats to law and order.”³⁶⁶
- *Public safety* means the protection “against danger to the safety of persons, to their life or physical integrity, or serious damage to their property.”³⁶⁷ Public safety cannot be used to impose “vague or arbitrary limitations.”³⁶⁸
- *Public order* often overlaps with public safety, and is the “sum of rules which ensure the functioning of society”.³⁶⁹ Neither the “hypothetical risk of public disorder nor the presence of a hostile audience” is a legitimate basis for restricting assembly rights.³⁷⁰ Restrictions may be imposed where protesters “themselves use or incite imminent, lawless and disorderly action [and where] such action is likely to occur”.³⁷¹
- *Public health* may be “invoked as a ground for limiting certain rights in order to allow a state to take measures dealing with a serious threat” to health, and the measures must be “specifically aimed at preventing disease or injury or providing care for the sick and injured.”³⁷²

³⁶³ *Djavit An v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 20652/92 ¶ 65, Eur. Ct. Hum. Rts. (Feb. 20, 2003), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60953>; General Comment No. 34 at ¶ 25 (a law “must be formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly,” it must “be made accessible to the public,” and it cannot “confer unfettered discretion” for the restriction on those who execute it).

³⁶⁴ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 61, ¶ 108 (2d ed. 2010).

³⁶⁵ ICCPR, arts. 19, 21 (listing the only permissible grounds for restriction). No other grounds are permissible. General Comment No. 34 at ¶ 22; U.N. Hum. Rts. Comm., General Comment No. 22, Article 18: *The Right to Freedom of Thought, Conscience, and Religion* ¶ 8, U.N. Doc. CCPR/C/21/Rev.1/Add.4 (July 30, 1993), available at <http://www.unhchr.ch/tbs/doc.nsf/0/9a30112c27d1167cc12563ed004d8f15>; U.N. Econ. and Soc. Council, U.N. Sub-Commission on the Prevention of Discrimination and Protection of Minorities, *Siracusa Principles on the Limitation and Derogation of Provisions in the ICCPR* ¶ 1, U.N. Doc. E/CN.4/1984/4 (1984) [hereinafter *Siracusa Principles*]; ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 50, ¶ 69 (2d ed. 2010); see also Special Rep. of the Secretary-General on the Situation of Human Rights Defenders, *Sixth Annual Rep. on the Situation of Human Rights Defenders, Promotion and Protection of Human Rights: Human Rights Questions, Including Alternative Approaches for Improving the Effective Enjoyment of Human Rights and Fundamental Freedoms* ¶ 96, U.N. Doc. A/61/312 (Sept. 5, 2006) (by Hina Jilani), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf?OpenElement>.

³⁶⁶ *Siracusa Principles* at ¶¶ 29-31.

³⁶⁷ *Siracusa Principles* at ¶ 33; see also ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 51, ¶ 74 (2d ed. 2010) (where safety is a concern, “extra precautionary measures should generally be preferred to restriction.”).

³⁶⁸ *Siracusa Principles* at ¶ 34.

³⁶⁹ *Siracusa Principles* at ¶ 22.

³⁷⁰ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 50, ¶ 71 (2d ed. 2010).

³⁷¹ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 50, ¶ 72 (2d ed. 2010).

³⁷² *Siracusa Principles* at ¶ 25; see also ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 51, ¶¶ 76-77 (2d

- If the *rights of others* are clearly harmed or threatened, necessary and proportionate restrictions may be justified.³⁷³ Any restrictions imposed must be the least restrictive to secure other rights.

If a legitimate ground is satisfied, the manner of restriction to achieve that aim must satisfy the necessary and proportionate tests. When invoking a legitimate ground, the government must “demonstrate in specific and individualized fashion the precise nature of the threat, and the necessity and proportionality of the specific action taken”.³⁷⁴ Governments may not invoke these restrictions “as a means to deny a right guaranteed ... or to impair it of its true content.”³⁷⁵ “Necessary” means that the restrictions must in fact be necessary to address a “pressing social need”.³⁷⁶ “Proportionality” means that the “nature and extent of the interference” must be balanced “against the reason for interfering.”³⁷⁷ Any restriction must be the least intrusive means to secure the legitimate objective.³⁷⁸

Protest Camps and Continuing Assemblies

Protest camps and other forms of continuing assemblies and protests are protected by international law. The OSCE’s report on assembly rights states that while OSCE guidelines address “temporary” assemblies, this does not preclude the erection of protected “protest camps”.³⁷⁹ It cites with approval to the European Court of Human Rights that, “demonstrators ought to be given sufficient opportunity to manifest their views.”³⁸⁰ The European Court has also noted that a continuing assembly does not cease to be an “assembly” protected by the freedom of assembly simply because it has a lengthy presence.³⁸¹

ed. 2010) (“restrictions should not be imposed unless similar concentrations of individuals are also restricted,” and stating that restrictions might be justified where “the health of participants is an assembly becomes seriously compromised.”).

³⁷³ See Organization of American States, Inter-Am. Comm’n H.R., Annual Report of the Inter-American Commission on Human Rights, *Report of the Office of the Special Rapporteur for Freedom of Expression*, OEA/Ser.L/V/II, Doc. 5 (Mar. 4, 2011), available at http://www.cidh.oas.org/annualrep/2010eng/RELATORIA_2010_ENG.pdf.

³⁷⁴ General Comment No. 34 at ¶ 35.

³⁷⁵ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 60 n.65, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (Mar. 7, 2006).

³⁷⁶ *Feldek v. Slovakia*, Judgment (Merits and Just Satisfaction), App. No. 29032/95 ¶ 73, Eur. Ct. Hum. Rts. (July 12, 2001), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-59588> (“The test of ‘necessity in a democratic society’ requires the Court to determine whether the ‘interference’ complained of corresponded to a ‘pressing social need,’ whether it was proportionate to the legitimate aim pursued and whether the reasons given by the national authorities to justify it are relevant and sufficient.”); *Patyi and Others v. Hungary*, App. No. 5529/05 ¶ 38, Eur. Ct. Hum. Rts. (Oct. 7, 2008), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88748>.

³⁷⁷ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 38-39, ¶ 39 (2d ed. 2010).

³⁷⁸ General Comment No. 34 at ¶ 34 (restrictions must be “the least intrusive instrument amongst those which might achieve their protective function.”); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, BENCHMARKS FOR LAWS RELATED TO FREEDOM OF ASSEMBLY AND LIST OF INTERNATIONAL STANDARDS ¶ 11 (2004), available at <http://www.osce.org/odihr/37907> (citing to relevant jurisprudence); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 38-39, ¶ 39 (2d ed. 2010).

³⁷⁹ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 29-30 (2d ed. 2010).

Nowak also uses the term “temporary” in his definition of protected assembly, but does not define the term. MANFRED NOWAK, U.N. COVENANT ON CIVIL AND POLITICAL RIGHTS: CCPR COMMENTARY 484 (N. P. Engel, ed., 2d ed. 2005).

³⁸⁰ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 30, ¶ 18 (2d ed. 2010).

³⁸¹ *Cisse v. France*, Judgment (Merits), App. No. 51346/99 ¶¶ 35, 40 Eur. Ct. Hum. Rts. (Apr. 9, 2002), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60413> (rejecting the argument of France that an “occupation” of several months could not constitute an “assembly,” and finding that the forced evacuation of the protest was prima facie an interference with the freedom of peaceful assembly); see also, e.g., *Mayor of London v. Hall*, [2011] 1 W.L.R. 504, ¶ 17 (Eng.) (“The right to express views publicly...and the right of the defendants to assembly for the purpose of expressing and discussing those views, extends to the manner in which the defendants wish to express their views and to the location where they wish to express and exchange their views. If it were

A protest camp may lawfully be restricted only for a legitimate purpose. The European Court has held that dispersing an assembly to protect against a serious health risk may be legitimate.³⁸² In a series of UK decisions on whether protest dispersal violated the freedom of assembly, factors such as preventing crime and the rights of others to use space, were also considered.³⁸³ Mere “nuisance” is not sufficient reason to close or otherwise restrict a protest camp.³⁸⁴ In addition, any restriction, including dispersal, must also meet the lawful, proportionate, and necessary test outlined above. If a continuing protest may justifiably be dispersed, dispersal methods must be carried out in a manner that respects the rights of protesters.³⁸⁵

Assembly Regulation: Permit and Notice Schemes

Because the freedom of assembly is a fundamental right, it should generally “be enjoyed without regulation insofar as is possible” and “those wishing to assemble should not be required to obtain permission to do so.”³⁸⁶ Many forms of assembly “do not warrant any form of official regulation” at all.³⁸⁷ In some circumstances, states may create – for e.g. the purposes of security and public order –notice schemes.³⁸⁸ However, these should be

otherwise, these fundamental human rights would be at risk of emasculation. Accordingly, the defendants’ desire to express their views in [a public square]...and to do so in the form of the Democracy Village, on the basis of relatively long term occupation with tents and placards, are...within the scope of [the freedoms of expression and assembly.]”.

³⁸² *Cisse v. France*, Judgment (Merits), App. No. 51346/99 ¶ 51, Eur. Ct. Hum. Rts. (Apr. 9, 2002), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60413> (finding that a two-month long occupation could justifiably be shut down on the basis of serious health-risk grounds). In citing to *Cisse*, the OSCE noted that the “protesters had reached a critical stage during a hunger strike, and were confined in unsanitary conditions.”

ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 51, ¶ 77 (2d ed. 2010).

³⁸³ *Tabernacle v. Secretary of State for Defence* [2009] EWCA (Civ) 23, (Eng.); *Gallastegui v. Westminster City Council*, [2012] EWHC (Comm) 1123, [87-89] (Eng.) (relevant factors include the rights of others to access the area, the rights of others to protest, the protection of health); *The Mayor Commonalty and Citizens of London v. Samede et al*, [2012] EWCA (Civ) 160 (Eng.) (relevant factors included private property rights, health and nuisance issues, the rights of others to worship, camp time span); *Mayor of London v. Hall*, [2011] 1 W.L.R. 504, ¶¶ 46-47 (Eng.) (regarding a protest camp – “Democracy Village” – at Parliament Square Gardens in London, and referring to the rights of others to access the gardens, the protection of health, and prevention of crime).

³⁸⁴ *Tabernacle v. Secretary of State for Defence* [2009] EWCA (Civ) 23, [43] (Eng.) (“Rights worth having are unruly things. Demonstrations and protests are liable to be a nuisance. They are liable to be inconvenient and tiresome, or at least perceived as such by others who are out of sympathy with them.”); HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 134, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (noting that a “peace camp” on Parliament Square might be “unsightly” but it “in no way” hindered the workings of Parliament, stating that there was “no good argument in favour of introducing an arbitrary limit on the duration of protests,” and finding that legitimate reasons to restrict a long-term protest could include security or the rights of other groups to protest in the same space).

³⁸⁵ *Cisse v. France*, Judgment (Merits), App. No. 51346/99 ¶ 52, Eur. Ct. Hum. Rts. (Apr. 9, 2002), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60413> (discussing the closure of an occupation, the Court stated that “the methods used by the police in an intervention that came without warning and was indiscriminate, went beyond what it was reasonable to expect the authorities to do when curtailing the freedom of assembly”).

³⁸⁶ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 35, ¶ 30 (2d ed. 2010).

³⁸⁷ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 27-28, ¶ 11 (2d ed. 2010).

³⁸⁸ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 63, ¶ 114 (2d ed. 2010) (“Prior notification should, therefore, only be required where its purpose is to enable the state to put in place necessary arrangements to facilitate freedom of assembly and to protect public order, public safety and the rights and freedoms of others.”). In *Kivenmaa v. Finland*, the U.N. Human Rights Committee found that “a requirement to notify the police of an intended demonstration in a public place six hours before its commencement may be compatible” with the freedom of assembly, but found the notification requirement in that case to be unjustified, and held that the individual’s arrest for unlawful “public meeting” (because she had not notified the authorities) was a violation of the rights to assembly and expression. *Kivenmaa v. Finland* ¶ 9.2, U.N. Hum. Rts. Comm., (412/90), CCPR/C/50/D/412/1990 (1994); 1 IHRR 88 (1994), available at <http://www1.umn.edu/humanrts/undocs/html/vws412.htm>; see also European

notification, not permit schemes, in that they should not require a request for permission.³⁸⁹ Any notification scheme must not “impose excessive demands”,³⁹⁰ and must be for the purpose of “informing the authorities so that they can take measures to facilitate the exercise of the right”.³⁹¹ Notice schemes must be “practical and not unduly bureaucratic”,³⁹² and designed to facilitate assembly rights.³⁹³ Where assemblies or marches are held outside notice schemes (and thus ‘unlawful’ under the domestic law), this fact alone does not per se justify assembly dispersal. The European Court of Human Rights has held that “an unlawful situation does not justify an infringement of freedom of assembly.”³⁹⁴

Commission for Democracy Through Law (Venice Commission), *Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations on the Republic of Armenia* ¶ 8, Adopted by the Venice Commission, 64th Plenary Session, October 21-22, 2005, Opinion No. 290/2004, CDL-AD (2005) 035 (Nov. 2, 2005) (any “system of notification for holding assemblies must not impair or prevent the lawful exercise of the right.”) (The Venice Commission is an inter-governmental organization of 58 member states. The U.S. is an observer state.); cf. HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 180, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (“insisting on prior notification of protests is a disproportionate interference with the right to protest and is more likely to discourage some protesters from cooperating with police than to encourage effective dialogue.”).

³⁸⁹ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 24, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (“[T]he exercise of fundamental freedoms should not be subject to previous authorization by the authorities...but at the most to a prior notification procedure”); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 29, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (Any organizers of non-notified assemblies should not be “subject to criminal sanctions, or administrative sanctions resulting in fines or imprisonment.”); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 65, ¶ 118 (2d ed. 2010) (“Any legal provisions concerning advance notification should require the organizers to submit a notice of the intent to hold an assembly, but not a request for permission.” Indeed, “in a number of jurisdictions, permit procedures have been declared unconstitutional.”); see also Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 139, OEA/Ser.L/V/II., doc. 66 (Dec. 31, 2011) (“[T]he exercise of the right of assembly through social protest must not be subject to authorization on the part of the authorities or to excessive requirements that make such protests difficult to carry out.”); Barankevich v. Russia, Judgment (Merits and Just Satisfaction), App. No. 10519/03 ¶ 28, Eur. Ct. Hum. Rts. (July 26, 2007), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81950> (welcoming an amendment to Russian law where a prior authorization requirement was replaced with a “simple notification of the intended assembly.”); cf. Nurettin Aldemir and others v. Turkey, Judgment (Merits and Just Satisfaction), App. Nos. 32124/02, 32126/02, 32129/02, 32132/02, 32133/02, 32137/02, and 32138/02 ¶ 42, Eur. Ct. Hum. Rts. (Dec. 18, 2007), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84054> (stating, in obiter dicta that it is not necessarily a violation of the freedom of assembly “if, for reasons of public order and national security,” a State requires meeting pre-authorisation.”) However, the Court in *Nurettin Aldemir* relied on *Djavit An* which did not hold that protest permit schemes were lawful. Rather, the Court in *Djavit An* held that because there was no law regulating the issuance of permits for travel into southern Cyprus, the permits were not “prescribed by law” and thus that the manner in which restrictions were imposed breached the freedom of assembly. *Djavit An v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 20652/92 ¶¶ 66-67, Eur. Ct. Hum. Rts. (Feb. 20, 2003), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-60953>.

³⁹⁰ Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 56, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (March 7, 2006) available at <http://www.cidh.org/countryrep/Defenders/DEFENDERS.ENGGLISH.pdf>.

³⁹¹ *Id.* at ¶ 57.

³⁹² ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 35-36, ¶ 30 (2d ed. 2010). In addition, the government should “always seek to facilitate and protect public assemblies at the organizer’s preferred location.” *Id.*

³⁹³ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 27-28, ¶ 11 (2d ed. 2010); European Commission for Democracy Through Law (Venice Commission), *Opinion on the OSCE/ODIHR Guidelines for Drafting Laws Pertaining to Freedom of Assembly* ¶ 29-30, Adopted by the Venice Commission, 64th Plenary Session, October 21-22, 2005, Study No. 332/2005, CDL-AD (2005) 040 (Dec. 12, 2005). Notice schemes should exist to, for example, enable police to protect protesters, divert traffic, or provide first-aid services. *Oya Ataman v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 74552/01 ¶ 39, Eur. Ct. Hum. Rts. (December 5, 2006), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78330>.

³⁹⁴ *Oya Ataman v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 74552/01 ¶ 39, Eur. Ct. Hum. Rts. (December 5, 2006), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78330>. In *Oya Ataman*,

[W]here demonstrators do not engage in acts of violence it is important for the public authorities to show a certain degree of tolerance towards peaceful gatherings if the freedom of assembly ... is not to be deprived of all substance.”³⁹⁵

In addition, *spontaneous assemblies* are protected and lawful, and should be facilitated by governments.³⁹⁶ They should be “regarded as an expectable (rather than exceptional) feature of a healthy democracy.”³⁹⁷ Any notification schemes should include exemptions for spontaneous assemblies, and if they do not, governments “should still protect and facilitate any spontaneous assembly so long as it is peaceful in nature.”³⁹⁸ The European Court of Human Rights has held that disbanding peaceful spontaneous assemblies “solely because of the absence of the requisite prior notice, without any illegal conduct by the participants, amounts to a disproportionate restriction on freedom of peaceful assembly.”³⁹⁹

Containment and Kettling of Protests

a demonstration of about 50 people intending to speak on a topical subject was organized without notifying the state, as required by domestic law. It was thus unlawful. The police ordered it to disperse, and the demonstrators refused to comply. The Court held that the dispersal was unlawful, that there was no evidence to “suggest that the group in question represented a danger to public order, apart from possibly disrupting traffic”. The Court was “particularly struck by the authorities’ impatience in seeking to end the demonstration” and found that the “police’s forceful intervention was disproportionate and was not necessary for the prevention of disorder,” *Id.* at ¶¶ 41-43. *See also* Inter-Am. Comm’n H.R., *Annual Report of the Inter-American Commission on Human Rights 1979-1980 ch. 5*, OEA/Ser.L/V/II., Doc. 13 rev. 1 (October 2, 1980) (finding violations where there were “mass arrests to repress public demonstrations” and describing mass arrests of peaceful demonstrators including groups of 7, 30, 43, 50, 107, 400, 500 persons); *Brokdorf* (1985), German Constitutional Court, at 357-60 (holding that a failure to fulfill a notice requirement was insufficient grounds to either prohibit or dissolve a demonstration); *Nurettin Aldemir and Others v. Turkey*, Judgment (Merits and Just Satisfaction), Eur. Ct. Hum. Rts. (Dec. 18, 2007), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84054> (finding a breach of the freedom of assembly where police forcibly dispersed, with truncheons and teargas, a peaceful assembly that had not fulfilled the domestic notice requirements and where police had ordered protesters to disperse).

³⁹⁵ *Oya Ataman v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 74552/01 ¶ 42, Eur. Ct. Hum. Rts. (December 5, 2006), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-78330>; *see also* HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 148, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (“Given the value of the right to protest, a certain amount of inconvenience or disruption needs to be tolerated.”).

³⁹⁶ European Commission for Democracy Through Law (Venice Commission), *Opinion on the Law Making Amendments and Addenda to the Law on Conducting Meetings, Assemblies, Rallies and Demonstrations on the Republic of Armenia* ¶ 37, adopted by the Venice Commission, 64th Plenary Session, October 21-22, 2005, Opinion No. 290/2004, CDL-AD (2005) 035 (Nov. 2, 2005) (criticizing a law that prohibited spontaneous demonstrations and welcoming a law that prohibited their termination). The Venice Commission is an inter-governmental organization of 58 member states. The U.S. is an observer state.

³⁹⁷ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 68-69, ¶ 128 (2d ed. 2010).

³⁹⁸ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 69, ¶ 131 (2d ed. 2010); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 29, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

³⁹⁹ *Bukta and Others v. Hungary*, Judgment (Merits and Just Satisfaction), App. No. 25691/04 ¶ 36, Eur. Ct. Hum. Rts. (July 17, 2007), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-81728>. The Court found that the failure of the protesters to fulfill notice requirements where they held a spontaneous assembly did not justify dispersal of their peaceful protest and that the police dispersal was a violation of the freedom of assembly. The Court noted that “there is no evidence to suggest that the applicants represented a danger to public order beyond the level of the minor disturbance which is inevitably caused by an assembly in a public place.” *Id.* at ¶ 37; *cf.* *Eva Molnar v. Hungary*, Judgment (Merits), App. No. 10346/05, Eur. Ct. Hum. Rts. (Oct. 7, 2008), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-88775> (holding that an assembly was not “spontaneous” when it occurred two months after the trigger for the demonstration, and finding lawful the eventual dispersal of an unnotified assembly where protesters – using their own vehicles – brought traffic on a bridge to a complete standstill for several hours, and then continued to protest around a public square, seriously disrupting vehicular traffic for 8 hours).

Kettling (the police practice of completely surrounding or corralling protesters, temporarily “detaining” them within a limited area, and prohibiting their exit) and other blanket restrictions on the liberty and movement of individuals participating in protests are limitations on protest rights, and very rarely justifiable.⁴⁰⁰ The UN Special Rapporteur on peaceful assembly stated that he is “opposed to the practice,” and welcomed the Toronto police department’s decision to abandon it.⁴⁰¹ In March 2012, the European Court of Human Rights held that kettling may only be justified as an exceptional crowd control measure where, for example, the “police had no alternative but to impose an absolute cordon if they were to avert a real risk of serious injury or damage”.⁴⁰² The Court stressed that it:

[M]ust be underlined that measures of crowd control should not be used by the national authorities directly or indirectly to stifle or discourage protest, given the fundamental importance of freedom of expression and assembly in all democratic societies.⁴⁰³

In a 2012 case on kettling that examined the practice in light of human rights law, the United Kingdom Court of Appeal held that:

Containment of a crowd involves a serious intrusion into the freedom of movement of the crowd members, so it should only be adopted where it is reasonably believed that a breach of the peace is imminent and that no less intrusive crowd control operation will prevent the breach, and where containment is otherwise reasonable and proportionate.⁴⁰⁴

The European Court of Human Rights has found a breach of the freedom of assembly where police contained a group of peaceful protesters, did not let them leave, and then arrested them without giving a warning that could be heard by all.⁴⁰⁵ The OSCE also notes that any detention of protesters during an assembly based on allegations that they committed an administrative or criminal offence must “meet a high threshold” and should only be used “in the most pressing situations, when failure to detain would result in the commission of serious criminal offences.”⁴⁰⁶ The UN Human Rights Committee has similarly expressed concern about large-scale arrests of protesters, and stated that only protesters committing criminal offences during demonstrations should be arrested.⁴⁰⁷

Media, Press Freedoms, and Independent Protest Monitoring

⁴⁰⁰ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 78-80, ¶¶ 158-61 (2d ed. 2010).

⁴⁰¹ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 37, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

⁴⁰² *Austin and Others v. The United Kingdom*, Judgment (Merits and Just Satisfaction), App. Nos. 39692/09, 40713/09 and 41008/09 ¶ 66, Eur. Ct. Hum. Rts. (March 15, 2012), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-109581>. The Court in this case emphasized the “specific and exceptional” facts of the case, where the kettle was “necessary” to “prevent serious injury or damage,” and where police engaged in the controlled release of individuals from the cordon. *Id.* at ¶¶ 67-68.

⁴⁰³ *Id.* at ¶ 68.

⁴⁰⁴ *The Queen (McClure and Moos) v. The Commissioner of Police of the Metropolis* [2012] EWCA (Civ) 12, [95] (Eng.).

⁴⁰⁵ *Bicici v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 30357/05 ¶¶ 17, 55, Eur. Ct. Hum. Rts. (May 27, 2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98909>.

⁴⁰⁶ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 61, ¶ 108 (2d ed. 2010).

⁴⁰⁷ U.N. Hum. Rts. Comm., *Concluding Observations of the Human Rights Committee: Canada* ¶ 20, U.N. Doc. CCPR/C/CAN/CO/5 (April 20, 2006) available at [http://www.unhchr.ch/tbs/doc.nsf/0/7616e3478238be01c12570ae00397f5d/\\$FILE/G0641362.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/7616e3478238be01c12570ae00397f5d/$FILE/G0641362.pdf).

The right to expression protects the work of journalists and others covering issues of public interest.⁴⁰⁸ The right to expression protects a free press because the right to be well informed is one of the “fundamental prerequisites of a democratic society”.⁴⁰⁹ In explaining the importance of the right, the Inter-American Court of Human Rights has stated:

[I]t is essential that the journalists who work in the media should enjoy the necessary protection and independence to exercise their functions comprehensively, because it is they who keep society informed, and this is an indispensable requirement to enable society to enjoy full freedom.⁴¹⁰

Similarly, a United Kingdom Government human rights report on public demonstrations, prepared after extensive consultations with civil society, officials, and members of the police, explained:

Journalists have the right to carry out their lawful business and report the way in which demonstrations are handled by the police without state interference, unless such interference is necessary and proportionate ... the media are the eyes and ears of the public, helping to ensure that the police are accountable to the people they serve.⁴¹¹

The UN Human Rights Committee has recognized that “journalism” is undertaken not only by professional full-time reporters, but also “bloggers and others who engage in forms of self-publication in print, on the internet or elsewhere”.⁴¹²

Civil society groups, including designated assembly or protest observers, must also be permitted to freely observe public assemblies and demonstrations.⁴¹³ Independent monitors provide a “valuable contribution” to the enjoyment of protest rights, and can help to deter

⁴⁰⁸ General Comment No. 34 at ¶ 14.

⁴⁰⁹ Compulsory Membership in an Association Prescribed by Law for the Practice of Journalism ¶ 54 (Arts. 13 and 19 American Convention on Human Rights), Advisory Opinion OC-5/85, Inter-Am. Ct. H.R. (ser. A) No. 5 (Nov. 13, 1985).

⁴¹⁰ *Ivcher-Bronstein v. Peru*, Merits, Reparations and Costs, Judgment, Inter-Am. Ct. H.R. ¶ 150 (Feb. 6, 2001); see also Special Rapporteur on the Situation of Human Rights Defenders, *Fourth Rep. on the Situation of Human Rights Defenders* ¶¶ 119-120, U.N. Doc. A/HRC/19/55 (December 21, 2011) (by Margaret Sekaggya) available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf (describing the monitoring role of journalists at demonstrations as “essential,” and noting that restrictions on press freedoms and impunity for violations “can foster a climate of intimidation ... that can have a chilling effect on their work.”).

⁴¹¹ HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 200, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009).

⁴¹² General Comment No. 34 at ¶ 44 (noting, in addition, that any accreditation schemes to enable privileged access must be applied in a non-discriminatory manner, based on objective criteria, and “taking into account that journalism is a function shared by a wide range of actors.”); see also Special Rapporteur on the Situation of Human Rights Defenders, *Fourth Rep. on the Situation of Human Rights Defenders* ¶ 122, U.N. Doc. A/HRC/19/55 (December 21, 2011) (by Margaret Sekaggya) available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-55_en.pdf (stating that the “protection of journalists and media workers active on human rights issues should not be limited to those formally recognized as such, but should include other relevant actors, such as community media workers, bloggers and those monitoring demonstrations.”).

⁴¹³ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 21, ¶ 5.9 (2d ed. 2010). (“The independent monitoring of public assemblies provides a vital source of information on the conduct of assembly participants and law enforcement officials.”); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶¶ 48-50, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (noting that good practice includes police invitations to NGOs to conduct monitoring, and referring to examples of such practices in the U.K. and Malaysia).

violations.⁴¹⁴ The OSCE also recognizes that all individuals are permitted to film the police.⁴¹⁵

Restrictions of the movement of journalists or civil society members are rarely justified.⁴¹⁶ Attacks (including in the form of arbitrary arrest, threats, and intimidation) against journalists and those involved in gathering information on the human rights situation should be “vigorously investigated” and prosecuted.⁴¹⁷

4. Policing Protests: Use of Force, Policies and Training, Surveillance

Basis for strict constraints on police use of force. The purpose of policing protests is to ensure that protesters may exercise the freedom of assembly, and to ensure respect for the rights of others. A human rights approach to policing “requires that the authorities consider their duty to facilitate the enjoyment of the right to freedom of peaceful assembly.”⁴¹⁸ Constraints on police force are important for the protection of individual safety, and also for the protection of expression and assembly rights. Excessive use of force against protesters can have a clear chilling effect and inhibit others from exercising basic rights and freedoms.⁴¹⁹ United Nations human rights mechanisms, the European Court of Human Rights, and the Inter-American Court of Human Rights have all also observed that aggressive police tactics and excessive intervention – including the use of riot gear and disproportionate force against protesters – may *increase* tensions between protesters and police, escalate disorder, and may provoke protesters to react violently in response to perceived injustice.⁴²⁰

⁴¹⁴ Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 48, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai); Report to the U.N. General Assembly of the Special Representative of the Secretary-General on Human Rights Defenders ¶ 91, U.N. Doc. A/62/225 (Aug. 13, 2007) *available at* <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>.

⁴¹⁵ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 83, ¶ 169 (2d ed. 2010).

⁴¹⁶ General Comment No. 34 at ¶ 45 (referring to conflict-affected locations, sites of natural disasters, and locations where there are allegations of human rights abuses as spaces that should not be the subject of blanket movement restrictions).

⁴¹⁷ *Id.* at ¶ 23.

⁴¹⁸ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 75, ¶ 145 (2d ed. 2010).

⁴¹⁹ Nurettin Aldemir and Others v. Turkey, Judgment (Merits and Just Satisfaction), ¶ 34, Eur. Ct. Hum. Rts. (Dec. 18, 2007), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84054> (“the interference in the meetings and the force used by the police to disperse the participants, as well as the subsequent prosecution, could have had a chilling effect and discouraged the applicants from taking part in similar meetings.”).

⁴²⁰ Nurettin Aldemir and others v. Turkey, Judgment (Merits and Just Satisfaction), ¶ 45, Eur. Ct. Hum. Rts. (Dec. 18, 2007), *available at* <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-84054> (“there is no evidence to suggest that the group in question initially presented a serious danger to public order. Nevertheless, it is likely that they would have caused some disruption in a particularly busy square in central Ankara...[h]owever, the authorities intervened swiftly with considerable force in order to disperse them, thereby causing tensions to rise, followed by clashes.”); Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 54, OEA/Ser.L/V/II., doc. 66 (Dec. 31, 2011) (where unpermitted assemblies are broken up by police, “demonstrations that begin peacefully often end in incidents with the State police forces.”); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *First Rep. on Extrajudicial, Summary, or Arbitrary Executions* ¶ 112, Hum. Rts. Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns) (summarizing crowd psychology, sociology, criminology literature: “Crowds are more prone to violence when they see police actions as heavy-handed, and consequently illegitimate. The indiscriminate use of force against a crowd as a whole can persuade the more restrained members of the group to also resort to the use of force in order to protect their fellow group members.”); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, HANDBOOK ON MONITORING FREEDOM OF PEACEFUL ASSEMBLY, 24-27 ¶ 5 (2001); Report to the U.N. General Assembly of the Special Representative of the Secretary-General on Human Rights Defenders ¶ 44, U.N. Doc. A/61/312 (September 5, 2006) *available at* <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf> (reviewing responses globally to protests and finding that “it is frequently the excessive and disproportionate use of force by the police or army during peaceful demonstrations that has provoked violent reactions from an otherwise peaceful assembly.”).

International law and police use of force. International standards on police use of force are clear. The ICCPR protects the right to life and the right to be free from torture or cruel, inhuman or degrading treatment or punishment – these rights are the overarching principles governing police use of force.⁴²¹ Governments have a duty to take “reasonable and appropriate measures to enable peaceful assemblies to take place without participants fearing physical violence.”⁴²² The use of force by police should be of “last resort”, and is only legitimate if “absolutely necessary” and “proportional” to a threat.⁴²³

Two key documents outline the international standards and provide guidance to police: The Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁴²⁴ and the United Nations Code of Conduct for Law Enforcement Officials.⁴²⁵ The Basic Principles require officers to:

[A]s far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.⁴²⁶

Any lawful use of force by police must be in proportion to the seriousness of the offence and the legitimate object to be achieved by the use of force.⁴²⁷ States should thus ensure that their police are equipped to apply a differentiated use of force. Any deployment of less-lethal weapons “should be carefully evaluated” and their use “carefully monitored”.⁴²⁸

⁴²¹ See Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 35, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai).

⁴²² ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 75, ¶ 145 (2d ed. 2010).

⁴²³ G.A. Res. 34/169, ¶ 3, U.N. Doc. A/RES/34/169 (Dec. 17, 1969), available at <http://www2.ohchr.org/english/law/pdf/codeofconduct.pdf> (*Code of Conduct for Law Enforcement Officials*); Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 4 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>; Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *First Rep. on Extrajudicial, Summary, or Arbitrary Executions* ¶¶ 53–65, Hum. Rts. Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns); Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶¶ 64–65, OEA/Ser.L/V/II.124, doc. 5 rev. 1 (March 7, 2006); Andronicou and Constantinou v. Cyprus, Judgment (Merits), App. No. 86/1996/705/897 ¶ 171, Eur. Ct. Hum. Rts. (Oct. 9, 1997), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58102> (“the use of force must be no more than ‘absolutely necessary’ and ‘must be strictly proportionate’ to the achievement of a legitimate purpose”); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDEBOOK ON DEMOCRATIC POLICING, 35 ¶ 68 (2d ed. 2008) (“the use of force must be considered as an exceptional measure, which must not be used arbitrarily, but must be proportional to the threat, minimizing damage and injury, and used only to the extent required to achieve a legitimate objective.”) (internal citations omitted)).

⁴²⁴ Adopted by Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 4 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>.

⁴²⁵ Adopted by G.A. Res. 34/169, ¶ 3, U.N. Doc. A/RES/34/169 (Dec. 17, 1969), available at <http://www2.ohchr.org/english/law/pdf/codeofconduct.pdf> (*Code of Conduct for Law Enforcement Officials*).

⁴²⁶ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 4 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>.

⁴²⁷ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 5(a) (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>; G.A. Res. 34/169, ¶ 3, U.N. Doc. A/RES/34/169 (Dec. 17, 1979), available at <http://www2.ohchr.org/english/law/pdf/codeofconduct.pdf> (*Code of Conduct for Law Enforcement Officials*).

⁴²⁸ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27–Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶¶ 2–3 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>.

Police must respect these standards in all circumstances, including during arrests and in the limited circumstances where police may lawfully disperse an assembly.⁴²⁹ In the dispersal of peaceful but unlawful assemblies, police must “avoid the use of force or, where that is not practicable, restrict such force to the minimum extent necessary.”⁴³⁰ Even where protesters themselves break the law or engage in violence, police use of force must be proportionate to the threat faced.⁴³¹ Excessive police force violates the ICCPR’s prohibition against inflicting, instigating, or tolerating any act of torture or cruel, inhuman or degrading treatment or punishment.⁴³² Inhuman and degrading treatment includes, for example, unjustified force leading to bruising of a protester during assembly dispersal.⁴³³ If a protester is injured, the police must ensure that medical aid is provided “at the earliest possible moment”,⁴³⁴ and injuries must be promptly reported to superiors.⁴³⁵

Assessments of the legality of the use of force take into account not only the direct use of force itself, but all surrounding or preceding circumstances, including police department planning and control.⁴³⁶ Superior officers who know, or should know, that officers under their command resorted to unlawful use of force may also be responsible for any violations

⁴²⁹ Especially egregious protest repression (e.g., frequent killings of protesters), as have been observed in Libya and Kenya, may also constitute international crimes entailing individual international criminal responsibility for perpetrators. Where officials have engaged in widespread repression of protests and killings of protesters, they have been referred to and investigated by the International Criminal Court. See U.N. Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *First Rep. on Extrajudicial, Summary, or Arbitrary Executions* ¶¶ 72-73, Human Rights Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns) (noting that violations against protesters in Libya, Kenya, Honduras, Guinea, and Cote d’Ivoire were being investigated by the ICC); see also S.C. RES. 1970, 1-2, U.N. Doc. S/RES/1970 (Feb. 26, 2011) (referring the situation in Libya to the ICC because of the “repression of peaceful demonstrators” which amounted in that case to a “gross and systematic violation of human rights.”).

⁴³⁰ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 12 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>; ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 34 ¶ 65 (2d ed. 2008) (and sources cited therein); RALPH CRAWSHAW ET AL., *HUMAN RIGHTS and POLICING* 150 (2009).

⁴³¹ *Gulec v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 54/1997/838/1044 ¶ 73, Eur. Ct. Hum. Rts. (July 27, 1998), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58207> (finding that police use of force against protesters who attacked shops and police was justified, but finding that the force in fact used to disperse the demonstrations was excessive and violated the law where police opened fire and killed an individual).

⁴³² In addition, any use of undercover police to instigate violence in assemblies clearly violates the law. See Report to the U.N. General Assembly of the Special Representative of the Secretary-General on Human Rights Defenders ¶ 44, U.N. Doc. A/61/312 (September 5, 2006) available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf> (expressing grave concerns at allegations that some countries had used undercover personnel to instigate violence in peaceful assemblies).

⁴³³ See, e.g., *Bicici v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 30357/05, Eur. Ct. Hum. Rts. (May 27, 2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98909> (finding a violation of the prohibition against inhuman or degrading treatment where a demonstrator suffered bruises when police used unjustified force to disperse an assembly); *Ribitsch v. Austria*, Judgment (Merits and Just Satisfaction), App. No. 42/1994/489/571, Eur. Ct. Hum. Rts. (Dec. 4, 1995), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-57964> (finding a violation of the prohibition against inhuman or degrading treatment where a suspect was without just cause injured – indicated by 2-3cm bruises on the inside and outside of his right arm – by police during questioning).

⁴³⁴ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 35 ¶ 71 (2d ed. 2008); Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 5(c) (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>.

⁴³⁵ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶¶ 6, 22 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>.

⁴³⁶ See e.g., *Andronicou and Constantinou v. Cyprus*, Judgment (Merits), App. No. 86/1996/705/897 ¶ 171, Eur. Ct. Hum. Rts. (Oct. 9, 1997), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-58102>.

where they “did not take all measures in their power to prevent, suppress or report” excessive force.⁴³⁷

Policies and training. To comply with international law restrictions on the use of force, authorities should develop clear rules and policies on the policing of public demonstrations, and make these available to the public.⁴³⁸ States should also ensure that police forces are properly trained on how to “perform their jobs in situations involving mass concentrations of people.”⁴³⁹ This training should include methods for protest facilitation and policing, avoiding injury to participants or bystanders, negotiation and mediation skills, and understanding crowd behavior.⁴⁴⁰ Police forces are also encouraged to engage in debriefings with protesters after an event to assess any issues that may have arisen.⁴⁴¹ Police forces are urged generally to wear regular soft gear and uniforms (riot gear should be an exceptional measure, used where necessary in light of risk assessment), to engage in dialogue and communication with protesters, and to avoid escalating tensions with excessive and disproportionate use of force.⁴⁴²

⁴³⁷ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 25 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>. In addition, officers who report violations should be protected. See e.g., ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 55-56 ¶¶ 139-43 (2d ed. 2008); see also Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 25 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>; (officers who refuse unlawful orders to use force, or who report unlawful use of force shall not be subject to sanction).

⁴³⁸ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, *First Rep. on Extrajudicial, Summary, or Arbitrary Executions* ¶ 119(6), Hum. Rts. Council, U.N. Doc. A/HRC/17/28 (May 23, 2011) (by Christof Heyns). International commentary also emphasizes the importance of strong police leadership to ensure that human rights are respected during the policing of public demonstrations. See, e.g., HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST* ¶ 162, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (“Good leadership from the top of the police down is vital to ensuring respect for human rights in any policing operations, including policing protests. This will also help ensure consistent good practice across police forces. We recommend that any officer who is involved, in whatever way, with policing protests, should have access to accurate and helpful guidance on how to police compatibly with human rights standards.”).

⁴³⁹ Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 141, OEA/Ser.L/V/II, doc. 66 (Dec. 31, 2011); see also Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶¶ 43-47, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (discussing the importance of training and initiatives in countries around the world).

⁴⁴⁰ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 36 ¶ 72 (2d ed. 2008) (stating that, “[p]olice must be trained in ‘alternatives to the use of force and firearms, including the peaceful settlement of conflict, the understanding of crowd behavior’ and ‘negotiation and mediation.’”); Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 38, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (stressing the importance of dialogue and negotiation).

⁴⁴¹ HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST* ¶ 159, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009).

⁴⁴² Inter-Am. Comm’n H.R., *Report on the Situation of Human Rights Defenders in the Americas* ¶ 68, OEA/Ser.L/V/II, doc. 5 rev. 1 (March 7, 2006) (outlining basic measures that should be taken to minimize excessive force during the policing of protests); HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST* ¶¶ 175, 181, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (describing U.K. police force descriptions of their decision to become more communicative with protesters to facilitate protest rights, and stating that “police should take proactive steps to ensure that dialogue is encouraged.”); POLICE EXECUTIVE RESEARCH FORUM, *MANAGING MAJOR EVENTS: BEST PRACTICES FROM THE FIELD* 7 (2011) (referring to submissions from police chiefs that police “meet and greet” protesters); HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, *DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST* ¶ 186, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (describing submission by the Police Service of Northern Ireland that police “dress in normal uniform where possible, to avoid escalating situations. Backup officers in protective equipment are kept in reserve.”); POLICE EXECUTIVE RESEARCH FORUM, *MANAGING*

Surveillance. Government surveillance of peaceful protests can affect the “enjoyment of the right to protest.”⁴⁴³ Police may photograph or film assemblies, but photographing or filming for intelligence-gathering purposes can have a chilling effect on assembly participation, and thus should “not be done routinely.”⁴⁴⁴ The recording, processing, or permanent storing of individual protester identity information may breach privacy rights.⁴⁴⁵

Rights of law enforcement personnel. Police officer’s rights must also be protected.⁴⁴⁶ Violent protests, for example put the rights of police at risk. Police are entitled to protection from violence. They are also entitled to receive remuneration appropriate to their duties and responsibilities, to organize and join associations, to be protected against acts of retaliation if they report violations, and due process rights in any legal or disciplinary actions against them.⁴⁴⁷ In addition, officers who suffer the consequences of post-traumatic stress should be provided access to mental-health professionals for confidential debriefings.⁴⁴⁸

5. State Obligation to Investigate, Prosecute, and Remedy Violations

States have an international legal obligation to investigate, prosecute, and remedy human rights violations. This obligation requires States to have in place systems that enable individuals to have “accessible and effective remedies” to vindicate their rights.⁴⁴⁹ A failure to investigate allegations or a failure to bring perpetrators to justice can itself give rise to a “separate breach” of the ICCPR.⁴⁵⁰ The obligation to investigate and punish violations “requires that not only the direct perpetrators of human rights violations be punished, but also [those responsible for overseeing violations].”⁴⁵¹ States must make reparation to

individuals whose rights have been violated, in the form of restitution, public apologies, guarantees of non-repetition, changes in laws and practice, and bringing the perpetrators to justice.⁴⁵²

MAJOR EVENTS: BEST PRACTICES FROM THE FIELD 8, 10 (2011) (referring to submissions from police chiefs that police should generally avoid riot gear, and should use police in soft gear to minimize causing protesters to feel threatened); HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 187, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009) (recognizing that police officers should not be placed at risk of serious injury, but noting that the “deployment of riot police can unnecessarily raise the temperature at protests.”).

⁴⁴³ Report to the U.N. General Assembly of the Special Rep. of the Secretary-General on Human Rights Defenders ¶ 83, U.N. Doc. A/62/225 (Aug. 13, 2007) available at <http://www.unhcr.org/refworld/pdfid/4732dbaf2.pdf>.

⁴⁴⁴ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 83, ¶ 169 (2d ed. 2010)..

⁴⁴⁵ *Id.*

⁴⁴⁶ HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 162, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009)

⁴⁴⁷ See e.g., ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDEBOOK ON DEMOCRATIC POLICING, 55-56 ¶ 139-43 (2d ed. 2008); see also Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 25 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf> (officers who refuse unlawful orders to use force, or who report unlawful use of force shall not be subject to sanction).

⁴⁴⁸ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 75, ¶ 146 (2d ed. 2010).

⁴⁴⁹ ICCPR, art. 2(3); General Comment No. 31 at ¶ 15.

⁴⁵⁰ General Comment No. 31 at ¶¶ 15, 18.

⁴⁵¹ Inter-Am. Comm’n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 237, OEA/Ser.L/V/II., doc. 66 (Dec. 31, 2011).

⁴⁵² General Comment No. 31 at ¶ 16.

With respect specifically to police use of force, States have a clear legal duty to investigate allegations of excessive force by police, and to hold to any police responsible for misconduct.⁴⁵³ Police services must be accountable to the people they serve, and legal restrictions on use of force and protections for the rights to assembly and expression are meaningless if there is no effective procedure in place to investigate and punish alleged violations in accordance with law. Impunity – the absence of “investigation, pursuit, capture, prosecution and conviction of those responsible” for violations⁴⁵⁴ – is a key factor in the continuation of abuses:

The State has the obligation to combat impunity by all available legal means, because impunity encourages the chronic repetition of human rights violations ... ⁴⁵⁵

Investigations must be independent, comprehensive, impartial, effective, transparent, and prompt⁴⁵⁶ and the government must establish accessible and effective reporting and review procedures.⁴⁵⁷

Effective police accountability requires both internal disciplinary mechanisms (e.g., internal affairs), and also independent external oversight mechanisms, which are a necessary check on the inevitable structural independence flaws of purely internal mechanisms.⁴⁵⁸

⁴⁵³ See, e.g., Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶¶ 77-81, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (outlining state obligations to investigate and remedy, and stressing the importance for accountability of police wearing visible identification numbers on their uniforms); Report to the U.N. General Assembly of the Special Representative of the Secretary-General on Human Rights Defenders ¶ 98, U.N. Doc. A/61/312 (September 5, 2006) available at [http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98909](http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N06/488/07/PDF/N0648807.pdf?Inter-Am. Comm'n H.R., Second Report on the Situation of Human Rights Defenders in the Americas ¶ 149, OEA/Ser.L/V/II., doc. 66 (Dec. 31, 2011) (summarizing the obligation and relevant jurisprudence); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDELINES ON FREEDOM OF PEACEFUL ASSEMBLY 75, ¶ 146 (2d ed. 2010). With respect to allegations of excessive physical force by police, the legal prohibition against inhuman and degrading treatment “requires the authorities to investigate allegations of ill-treatment when they are “arguable” and “raise a reasonable suspicion”. Bici v Turkey, Judgment (Merits and Just Satisfaction), App. No. 30357/05 ¶ 39, Eur. Ct. Hum. Rts. (May 27, 2010), available at <a href=).

⁴⁵⁴ *Ituango Massacres v. Colombia*, Preliminary Objection, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 148, ¶ 299 (July 1, 2006).

⁴⁵⁵ Inter-Am. Comm'n H.R., *Second Report on the Situation of Human Rights Defenders in the Americas* ¶ 233, OEA/Ser.L/V/II., Doc. 66 (Dec. 31, 2011).

⁴⁵⁶ *García-Prieto et al. v. El Salvador*, Preliminary Objections, Merits, Reparations, and Costs, Judgment, Inter-Am. Ct. H.R. (ser. C) No. 168, ¶ 101 (Nov. 20, 2007); ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 36 ¶ 74 (2d ed. 2008) (use of force instances must be investigated); *Bici v. Turkey*, Judgment (Merits and Just Satisfaction), App. No. 30357/05 ¶¶ 39, 43, Eur. Ct. Hum. Rts. (May 27, 2010), available at <http://hudoc.echr.coe.int/sites/eng/pages/search.aspx?i=001-98909> (finding that the authorities failed to conduct an effective and independent investigation into allegations by a protester that she had been mistreated by police during a forced dispersal of assembly); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: *Study on Police Oversight Mechanisms*, U.N. Doc. A/HRC/14/24/Add.8 (May 28, 2010) (by Philip Alston) available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf> (reporting on the international law obligations of states to investigate police violence).

⁴⁵⁷ Eighth United Nations Conference on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, Aug. 27-Sept. 7, 1990 *Basic Principles on the Use of Force and Firearms by Law Enforcement Officials* ¶ 22 (Sep. 7, 1990) available at <http://www2.ohchr.org/english/law/pdf/firearms.pdf>; see also Special Rapporteur on the Rights to Freedom of Peaceful Assembly and Association, *First Rep. on the Rights to Freedom of Peaceful Assembly and Association* ¶ 77, Hum. Rts. Council, U.N. Doc. A/HRC/20/27 (May 21, 2012) (by Maina Kiai) (states “have an obligation to establish accessible and effective complaints mechanisms that are able to independently, promptly, and thoroughly investigate allegations.”).

⁴⁵⁸ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, *GUIDEBOOK ON DEMOCRATIC POLICING*, 39-42 ¶¶ 80-94 (2d ed. 2008); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: *Study on Police Oversight Mechanisms*, U.N. Doc. A/HRC/14/24/Add.8 (May 28, 2010) (by Philip Alston) available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf> (reviewing the causes and police impunity, surveying international law, and setting out guidelines for police accountability).

Accountability mechanisms should have sufficient resources, powers and independence to effectively carry out their functions.⁴⁵⁹ In an in-depth study of effective external oversight mechanisms, the UN Special Rapporteur on extrajudicial executions analyzed the elements of a successful mechanism. These include: the powers to compel police cooperation, investigate allegations, refer cases to criminal prosecution, enforce disciplinary measures; the mandate to propose general policing policy reforms; full operational independence from the police and freedom from political interference; secure financial independence; transparent and detailed public reporting; and civil society engagement and support.⁴⁶⁰

⁴⁵⁹ ORGANIZATION FOR SECURITY AND CO-OPERATION IN EUROPE, OFFICE FOR DEMOCRATIC INSTITUTIONS AND HUMAN RIGHTS, GUIDEBOOK ON DEMOCRATIC POLICING, 42 ¶ 93 (2d ed. 2008); Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: *Study on Police Oversight Mechanisms*, U.N. Doc. A/HRC/14/24/Add.8 (May 28, 2010) (by Philip Alston) available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf> (setting out the factors in effective oversight).

⁴⁶⁰ Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions, Addendum: *Study on Police Oversight Mechanisms*, U.N. Doc. A/HRC/14/24/Add.8 (May 28, 2010) (by Philip Alston) available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/14session/A.HRC.14.24.Add8.pdf>

PART II: HUMAN RIGHTS CONCERNS IN THE RESPONSE TO OCCUPY WALL STREET

Since the start of Occupy Wall Street in New York City on September 17, 2011, there have been reports of repeated excessive or unnecessary police use of force, massive and continuous overpolicing and poor communication, obstruction of press freedoms and independent legal monitoring, constant police surveillance, unjustified restrictions on the ability of individuals to peacefully assemble in public spaces, arbitrary rule enforcement, and transparency failures. There has also been near-complete impunity for alleged abuses.

Each of these specific issues raises serious concerns about New York City's response to the Occupy protests, and is thus documented separately and in detail below. Many of the reported allegations individually indicate clear violations of the government's obligation to uphold assembly and expression rights. When considered together, a complex mapping of protest suppression emerges. The City's response to Occupy is analyzed here through the network of laws, rules, and police use of force—at turns applied aggressively, recklessly, selectively, and arbitrarily—that have operated to justify or enforce the arrest and dispersal of peaceful protesters and assemblies.

Police are responsible for protecting the communities in which they operate, and for ensuring the conditions that enable individuals and groups to exercise their basic rights. These duties include enforcing the law at protests, especially where they are violent or threaten public order. Yet the protests in New York City, as widely reported, have been almost categorically peaceful, and only isolated instances of violence by individuals at protests have been observed or alleged.¹

But in many instances, the police have responded aggressively to nonviolent protest, and have escalated situations—through arbitrary or misapplications of the law, an excessive police presence, or the use of unwarranted force. The police response has thus, in some individual cases and considered cumulatively, undermined basic assembly and expression freedoms. At times, it has itself also presented a threat to the safety of New Yorkers.

This Part documents the major areas of concern in the government response to the Occupy Wall Street protests from September 2011 through July 2012. It focuses on the response in New York City, and incorporates some specific comparative data from cities across the United States where relevant and known.

¹ For example, New York City's Mayor Bloomberg stated that, "the majority of the protesters have been peaceful and responsible." Michael Bloomberg, *Michael Bloomberg's statement on the Zuccotti Park clearance*, GUARDIAN (Nov. 15, 2011, 8:39 EST), <http://www.guardian.co.uk/world/2011/nov/15/michael-bloomberg-statement-zuccotti-park>. See also Office of Pub. Affairs, U.S. Dep't of Homeland Sec. (Oct. 18, 2011, 12:55 EST), in *Occupy Wall Street Part 1*, posted to FOIA Library: *Frequently Requested Records*, HOMELAND SECURITY 146 (<http://www.dhs.gov/xlibrary/assets/foia/occupy-wall-street-redacted-1.pdf>) (last updated June 14, 2012) ("[w]e are treating all of these protests nationwide as peaceful demonstrations."); e-mail from Matthew Chandler to Suzanne Spaulding et al. (Nov. 16, 2011, 3:57 EST), in *id.* at 166; e-mail from [redacted] to [redacted], Domestic Terrorism Analyst, DHS Office of Intel. & Analysis (Oct. 24, 2011, 4:39 EST), in *id.* at 47 (stating that "the Occupy Wall Street-type protesters mostly are engaged in constitutionally protected activity"). In New York City, some incidents of isolated protester violence have been reported: Colin Moynihan, *12 Arrested at Manhattan March for Oakland Protesters*, N.Y. TIMES (Jan. 30, 2012), <http://cityroom.blogs.nytimes.com/2012/01/30/12-arrested-at-n-y-c-march-for-oakland-protesters/>; Daily Mail Reporter, *Occupy Activists Retake Wall Street While Police Focus on New Years Eve in Times Square*, MAIL ONLINE (Jan. 1, 2012), <http://www.dailymail.co.uk/news/article-2080939/Occupy-activists-retake-Wall-Street-police-busy-dealing-New-Year-s-Eve-Times-Square.html>; Tom Liddy, *Dozens Arrested at Occupy Wall Street Rally*, DNAINFO (Mar. 18, 2012, 3:15 PM), <http://www.dnainfo.com/new-york/20120318/downtown/dozens-arrested-occupy-wall-street-clash> (last updated Mar. 18, 2012, 6:22 PM).

Chapter One: Aggressive and Excessive Police Use of Force

Reports, videos, and allegations of unjustifiably aggressive and excessive police force against bystanders, protesters, legal observers, and journalists have been a constant and persistent feature of the Occupy protests. Witnesses and victims have reported allegations of such incidents frequently since Occupy started.²

Under international law, police may only use force if it is “absolutely necessary” and “proportional” to a threat; the use of force should be of “last resort.” Police are required to respect these standards at all times, including during arrests, lawful assembly dispersal, and in response to unlawful or violent activity.³

This section outlines and provides examples of the recorded forms of alleged aggressive or excessive force used,⁴ including:

- *Bodily force* (e.g., striking, punching, shoving, throwing, kicking, dragging);
- *Weapon use* (e.g., batons, barricades, scooters, horses, pepper spray); and
- *Restraints* (flex cuffs).

Because of the very large number of allegations, this report documents known reported incidents in a Table (see *Appendix I: Table of Alleged Police Use of Force Incidents*). The Table documents 130 alleged incidents.

The Table includes incidents documented by the Research Team that raise concerns about the police use of force, and that warrant investigation by authorities.⁵ It includes incidents witnessed by members of the Research Team, reported by witnesses and victims in interviews with the Research Team, evident in video and photographs, documented in credible media reports, witnessed by journalists, and/or credibly claimed in civil suits. Recorded incidents include:

- Incidents where the available evidence *strongly suggests*—because of highly credible witness testimony and/or media reporting and/or clear video evidence—that: (1) force in fact occurred, and (2) was unnecessary, unjustified, or excessive; and
- Incidents where the available evidence: (1) strongly suggests that force in fact occurred, and (2) *raises legitimate prima facie concerns* that the force was unnecessary, unjustified, or excessive, but where circumstances or facts do or may exist that could potentially justify the police use of force.⁶

The Table includes a spectrum of police use of force incidents that range from very serious (e.g., hard kicks to the face, overhead baton swings, intentionally applying very hard force to the broken clavicle of a handcuffed and compliant individual) to relatively minor (e.g.,

² Alleged incidents occurred on September 19, 20, 21, 24; October 5, 14, 15, 26; November 15, 17, 30; December 12, 17, 31; January 1, 29; March 17-18, 20-21, 24; April 16, 20; May 1, 30; June 13; and July 11. These are documented in Appendix I.

³ See Part I, Chapter Three, “International Law and Protest Rights.”

⁴ In New York, there are no known reported uses or threats to use lethal projectiles, less-lethal projectiles (e.g. rubber bullets, bean-bag projectiles), Tasers®, smoke grenades, or tear gas against Occupy protesters in NYC. Reports of tear gas use were made on September 24, but these were mistaken and subsequently retracted.

⁵ Due to the large number of Occupy protests, the Research Team’s view is that the Table, while extensive, represents just a portion of the actual number of incidents.

⁶ For example, where it is possible on the available evidence that an individual may have been resisting arrest or posing some threat to an officer. Where such circumstances may exist, or police are known to have provided a different account of an incident, this is noted in the Table.

unnecessary shoving). The spectrum of incidents is included to demonstrate the nature, range, and extent of police force at protests. In addition, while some of the uses of force documented are comparatively minor, they are included because of the predictable chilling effect that unnecessary police force has on the enjoyment of assembly and expression rights.

1. Bodily Force: Pushing, Shoving, Dragging, Hitting, Punching, Kicking

The most frequent form of force allegedly used by police against protesters, bystanders, and journalists is *bodily force*, including through:

- Pushing;
- Shoving, tackling, or throwing forcefully backwards, to the ground, or against a wall;
- Dragging along the ground;
- Hair pulling;
- Hitting or punching, including to the head and face; and
- Kicking, including to the head and face.

Allegations that police employed such force without apparent need or justification were made repeatedly and consistently.⁷ The Table appended to this report lists 97 such alleged incidents. A sample of these includes the following:

- On **September 24**, a café employee at work near Union Square heard a passing Occupy march, went outside, and decided to begin filming after seeing police using what he felt was excessive force on protesters. Video evidence shows a white-shirted police officer pushing the café employee, camera in hand. It appears that the employee then began speaking to the officer while holding both hands in the air as the officer approached him. In an interview, the employee stated that he asked the officer why he was pushing and told the officer, “I’m just taking pictures.” Video then shows the officer grabbing the employee by the wrist, and flipping him hard to the ground face-first, in what was described as a “judo-flip.” The employee stated that he was subsequently charged with “blocking traffic” and “obstructing justice.”⁸ On the same day, in a separate incident, video shows that an officer reached across orange netting, which police were using to kettle several protesters, and grabbed a protester by the strap of her backpack. The officer then dragged the protester underneath the netting, where other officers then grabbed her. The officers proceeded to drag her to the curb, also by the straps of her backpack. While being dragged, video shows that the strap of her backpack appeared to be choking her. At least three officers are then seen holding her facedown in the street, arresting her.⁹
- On **November 15**, Karen Smith, a retired New York Supreme Court judge, was working as a legal observer during the eviction of Zuccotti Park. She allegedly witnessed an officer throw a woman to the ground “out of nowhere” and hit her in the head. Smith stated that she then told the officer, “cuff her if she’s done something, but you don’t need to do that.” The officer then, Smith said, asked her if she wanted to get arrested, at which point she stated that she was a legal observer. The officer again asked if she wanted to “get arrested,” and pushed Smith up against a wall.¹⁰ Further allegations of use of force against Legal Observers are documented below, in Chapter Four.

⁷ Alleged incidents occurred on September 19, 20, 21, 24; October 5, 14, 15, 26; November 15, 17; December 12, 17, 31; January 1, 29; March 17-18, 20-21, 24; April 16, 20; May 1, 30; June 13; and July 11. See Table.

⁸ Table entry 7.

⁹ Table entry 7.

¹⁰ Table entry 9.

- On **December 17**, one protester, who typically plays a de-escalation role at protests, reported being punched in the left temple by an officer, without any apparent provocation or notice. The punch led to swelling, bleeding, bruising, dizzy spells, and nausea; the individual sought emergency medical treatment.¹¹ In a separate incident, a protester stated he was standing on the sidewalk next to a number of journalists when an officer ordered him to move back, into the street. The protester did not want to move into the street because he had, at prior protests, seen numerous arrests and at least one beating of a person who moved into the street. The officer pushed him in the chest, causing him to fall to the ground.¹² On the same day, a Guardian journalist stated that while he was covering the protest and wearing press identification, an officer grabbed his collar, “jammed a fist” into his throat, and turned him “into a de facto battering ram to push back protesters.” Later in the evening, another reporter holding a large video camera was shoved repeatedly by an officer.¹³
- A credentialed photographer stated that on **December 31–January 1**, an officer shoved her against a wall: “[I] was on the sidewalk. I have a picture to prove it. The march was like fifteen feet behind me....I had my [NYPD] press pass clearly visible. Some white shirt grabbed me, shoved me against the wall and said I was arrested. ...This other photographer also got thrown around the same time—he also got arrested.” Another credentialed journalist also witnessed the incident. An officer subsequently let the photographer go and told her to quickly leave the protest. This witness also stated that in the at least twelve actions she had covered, “pretty much every time I’m there, I’m pushed or shoved by the cops.”¹⁴ Further allegations of use of force against the press are documented in Chapter Three.
- A significant number of incidents were reported on **March 17-18**, during the six-month anniversary celebration of Occupy Wall Street. One journalist described the night as “the most violent police response” he had seen at an Occupy protest.¹⁵ According to witnesses and news reports, police moved into Zuccotti Park where protesters were peacefully assembling, ordered everyone to disperse, and sought to close the park. The reasons for the police action are unclear, but appear to be based either on the presence in the park of handheld tent “signs,” or because a tarp was tied between two trees. There are no reports or indications of any imminent or ongoing criminal activity or danger to public safety posed by the assembly. According to reports, the police, in seeking to disperse the assembly, then used unnecessary force against those in and around the park, including those engaged in passive resistance, as well as those seeking to leave the park in accordance with the dispersal order. One protester alleged witnessing police punch a woman in the side of her head, and repeatedly shove protesters from behind. A journalist stated that he was shoved from behind, saw police shove “a lot of other people,” “repeatedly shove a woman who was saying that she was leaving,” “stomp” on and kick people, “punch people in the heads to get them to release [from nonviolent resistance],” and pick a girl up and throw her. Another independent journalist stated that she saw an arrested protester screaming that his thumb was broken, and that she also saw smudges all over his face, “like [his] face had been stepped on.” One protester, recognizing an officer and approaching him to greet him, stated that the officer

¹¹ Table entry 41.

¹² Table entry 72. *See also* Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

¹³ Table entry 73, 75.

¹⁴ Table entry 79.

¹⁵ Interview with J.A. Myerson (Journalist) (2012).

without warning shoved him hard twice in the chest. During a march after the park's closing, journalists reported that officers slammed an Occupy medic's head into a glass door, smashing the glass.¹⁶

- On **May 30**, during a student march, a member of the Research Team witnessed a particularly violent arrest. A protester was observed lying on the ground, with a number of officers standing near. The protester stated that his shoulder had just been dislocated; the officers stated that they had called an ambulance, and were not going to handcuff the protester because of his injury. However, moments later, a second group of officers rushed in and aggressively handcuffed the protester. He screamed out in pain repeatedly and told the officers about his injury, asking them to be gentle. The officers responded by stating the he was “a liar,” and they repeatedly intentionally pushed and pulled his injured shoulder. When EMTs did subsequently arrive, they inspected his shoulder, immediately removed the handcuffs, and put him in an ambulance for treatment. The individual's lawyer later stated that the protester in fact had suffered a broken clavicle, an extremely painful and serious injury.¹⁷
- On **June 13**, a member of the Research Team witnessed officers arresting a protester. A number of officers took the protester to the ground, and restrained him as he lay face-first on the street. The Research Team member heard the protester cry out, and knelt down to observe the arrest. She then witnessed an officer pull back his leg and kick the protester hard in the face. Another witness also saw the incident. Efforts to obtain the badge number of the responsible officer were thwarted by police, who refused to identify the officer and then took him away in a police van.¹⁸

2. Weapon Use: Batons, Pepper Spray, Barricades, Scooters, Horses

Police have also used batons, pepper spray, barricades, scooters, and horses against protesters, journalists, and bystanders. The Table appended to this report lists 41 such alleged incidents. The following describes each type of weapon use in more detail:

Batons. Police have often been observed holding their batons out while walking alongside or behind Occupy protests. Protesters, journalists, and others reported feeling afraid while walking with a peaceful protest accompanied by officers swinging or holding up their batons. One independent journalist and teacher described seeing it as “terrifying.”¹⁹ This fear is compounded by the actual use of batons—there are consistent reports of police jabbing, hitting, and swinging batons at protesters, bystanders, legal observers, and members of the press.²⁰

In some cases, witnesses report that police swing their batons at a crowd seemingly indiscriminately or wildly, or appear to swat at individuals nearby, sometimes apparently in an aggressive effort to keep them back from an area.²¹ Most *contact* baton use entails police holding the baton horizontally at waist level and using it to push or jab individuals, generally

¹⁶ Table entries 105, 106, 107, 108, 109, 112, 113. See also NYCLU, Free Speech Threat Assessment # 1 (March 17, 2012-April 10, 2012), available at www.nyclu.org/protest.

¹⁷ Table entry 126.

¹⁸ Table entry 127. See also Interview with Tim Weldon (Protester trained in post-conflict development) (stating that the officer responsible kept covering up his badge and turning away, and other officers refused to provide the number).

¹⁹ Interview with independent journalist and teacher (SSS88) (2012) (describing actions witnessed on October 5).

²⁰ Alleged incidents occurred on September 24; October 5, 14, 15, 26; November 15, 17; January 29; March 17-18. This includes Table entries 11, 14, 18, 19, 21, 29, 33, 36, 37, 44, 47, 48, 53, 54, 55, 58, 63, 64, 90, 101, 102, 103, 111.

²¹ Table entries 19, 20.

to force crowd movement.²² While there are certainly circumstances in which the use of batons for this purpose is appropriate, numerous incidents were reported or documented in which the force appeared unnecessary and excessive. On October 5, for example, two female Legal Observers (one of whom is a member of the Research Team) were, without warning, each jabbed in the stomach by an officer as they sought to document other uses of force and arrests.²³ On the same day, videos show that an officer struck out at a crowd with at least nine two-handed baton swings. The precipitating circumstances for this use of force are unclear, but available video evidence strongly suggests that officers responded to whatever threat may have existed (if any did) with indiscriminate force. The officer swung at protesters whose backs were turned, as well as in the direction of those who were holding their arms out and hands up, as if signaling the officer to stop. The video appears to show that at least three of the officer's swings struck protesters. None of the protesters appeared to be physically threatening the officer. A journalist also stated that he was struck with a baton at that time.²⁴

Videos, news reports, and witness testimony also indicate that in some cases, and without apparent justification, police used an overhead baton swing to hit protesters.²⁵ These incidents are especially concerning, given the risk of serious injury that such baton use poses.²⁶

Pepper spray. Police used pepper spray against Occupy protesters and others nearby in seven known incidents.²⁷ On September 24, Deputy Inspector Anthony Bologna pepper-sprayed several female protesters kettled behind orange netting and posing no apparent threat of any sort; the incident was widely reported and resulted in a disciplinary sanction for officer Bologna, the only known punishment of an officer for Occupy-related allegations.²⁸ On the same day, a protester also alleged that the police used pepper spray to prevent her from videotaping an arrest.²⁹ One citizen journalist described his response to the incidents: “Physically attacking people with a chemical agent for no reason—when you have cops doing that, you don’t feel safe when you see cops.”³⁰

On October 5, police used pepper spray against a crowd of protesters and journalists.³¹ The use of the spray seemed to have been part of an attempt to keep individuals away from protesting on Wall Street or to disperse the crowd,³² but witnesses also reported that the

²² See e.g., Interview with livestreamer (497AB) (2012) (stating that most of the observed baton use is horizontal use, to push); John Farley, *Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-professionals Take*, SALON (Sept. 28, 2011, 7:37 AM), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ (journalist reporting that he “saw about 20 or 30 police officers tackle people and prod them roughly with police batons”).

²³ Table entry 21.

²⁴ Table entry 19.

²⁵ Table entries 33, 36, 37, 54, 64.

²⁶ See Part I, Chapter Two, “U.S. Policing Guidelines and Use of Force Rules” (noting that some jurisdictions prohibit or strictly circumscribe the use of overhead baton swings).

²⁷ Alleged incidents occurred on September 24; October 5; November 15; December 31. This includes Table entries 15, 16, 22, 23, 44, 47, 77.

²⁸ Table entry 15.

²⁹ Table entry 16.

³⁰ Interview with livestreamer (497AB) (2012).

³¹ See Interview with protester (LLL66) (2012) (described being pepper sprayed at the intersection of Broadway and Wall Street, and stating that it felt at first “tingly,” then “burning,” like “someone rubbed chili all over your face.”). See Table entries 22, 23.

³² See Andy Newman & Colin Moynihan, *23 Arrested Wednesday in Wall St. Protest*, N.Y. TIMES (Oct. 6, 2011, 10:22 AM), <http://cityroom.blogs.nytimes.com/2011/10/06/23-arrested-wednesday-in-wall-st-protest/> (“photographs from the scene [at the intersection of Broadway and Wall Street] showed an officer behind the barricade directing a stream of pepper spray at people trying to shove their way past.”).

spray was used “indiscriminately” against anyone nearby,³³ and a number of journalists stated that they were sprayed.³⁴ Pepper spray was reportedly used during the eviction of Zuccotti Park; the circumstances are unclear.³⁵ Police also used the spray as an apparent “crowd control” tactic on December 31–January 1, in Zuccotti Park. The spray was used against a large group of individuals, without warning to many of them, and impacted many, including protesters, journalists, and police themselves.³⁶

In none of these cases were the police observed providing or reported to have provided any medical treatment to those pepper-sprayed.

Barricades. In addition to being used as passive crowd management, exclusion, or containment tools, in some cases officers used barricades as direct contact weapons. Metal and wooden barricades, and pieces of barricades, were reportedly used to shove, push, or strike protesters. There are no known public regulations or guidelines governing the use of barricades as police weapons, although they have reportedly been used as such on numerous occasions:³⁷

- One lawyer present at a **November 17** protest stated that she witnessed the police use barricades as a “weapon.” She said, “It was really scary...I saw officers pick up a barricade and use it to push people.”³⁸
- Similar reports were made about protests on **December 31–January 1**. Individuals reported that police “aggressively” responded to protesters’ removal of barricades surrounding Zuccotti Park by “picking up barricades and using them to push people.”³⁹ One observer said: “It wasn’t just ‘defending’ or keeping the barricades in place—it was aggressive and using the barricades against people.”⁴⁰ One video shows an individual apparently speaking to an officer over a barricade. The officer then picks up the barricade and rams it into the individual’s face; the individual is not apparently involved in any illegal or threatening behavior.⁴¹
- On **March 17**, one protester alleged that police pushed a barricade forcefully back, into a group of protesters. This forced him to fall and become trapped under the moving barricade.⁴²
- On **March 21**, according to witnesses and news reports, when police moved in to force Occupy protesters out of Union Square park at closing time, officers threw a protester backwards so forcefully that she went “semi-airborne,” and landed on her back and head. Her “head slammed down,” and she apparently became unconscious. Other protesters attempting to assist her were then also pushed by police, and the injured protester was trampled. One witness said an officer wielding part of a police barricade shoved it into her chest. Another protester who was present at the time said that he witnessed police use a barricade as a “battering ram or plow to ram the crowd of protesters. They began to knock them over — press the barricades on to the

³³ Interview with community member who frequently attends OWS events (GGG22) (2012) (stating that on October 5, “They literally were just indiscriminately pepper spraying just anyone”).

³⁴ Table entry 22.

³⁵ See Lila Shapiro & Maxwell Strachan, *Occupy Wall Street: New York Police Department Evicts Protesters, Clears Zuccotti Park [Latest Updates]*, HUFFINGTON POST (Nov. 15, 2011, 5:59 AM), http://www.huffingtonpost.com/2011/11/15/zuccotti-park-cleared-occupy-wall-street_n_1094313.html (reporting that police officers used pepper spray during the eviction of protesters from Zuccotti Park).

³⁶ Table entries 22, 23.

³⁷ Alleged incidents occurred on November 17; December 31–January 1; March 17–18, and March 20–21. This includes Table entries 65, 66, 87, 88, 104, 117.

³⁸ Interview with Paula Segal (Lawyer) (2012).

³⁹ Interview with community member who frequently attends OWS events (GGG22) (2012).

⁴⁰ Interview with community member who frequently attends OWS events (GGG22) (2012).

⁴¹ Table entry 88.

⁴² Table entry 104.

group of people who had fallen. Not just pushing it on them — *crashing* onto them.”⁴³ While the actions of some of the officers involved appeared unjustifiably aggressive, a witness recalled that one officer moved in to protect him from the surrounding commotion, and said, “Remember that not every one of us is like that.”⁴⁴

Scooters. Occupy marches are consistently policed by officers on scooters. Generally, officers ride in the road alongside sidewalk marches — effectively functioning as a barricade-like extended “crowd-control” tool. This form of scooter use is typically conducted safely, although there are a number of reported cases of police running their scooters into bystanders and protesters.⁴⁵ However, police have also used scooters, at times dangerously, as a direct contact crowd *dispersal* tool, and driven either recklessly or intentionally at and into protesters’ bodies.⁴⁶

One parent and protester described an incident in which police almost hit her son with a police scooter on March 17. During an Occupy march, they were crossing the street when one officer revved forward on his scooter right in front of her child, seemingly intentionally to intimidate them. She went immediately home after the incident and described feeling profoundly troubled:

This was a person who I teach my kid to go to if something happens or if he can’t find me. I want to bring my kid [to protests] because I want him to see that other people care about the future. I want to keep him safe at protests, but also to have a safe future. We have friends who are police. I don’t want my kid growing up thinking cops are bad or that he can’t go to them.⁴⁷

One witness, describing seeing police drive their scooters right into people said, “This tactic is out of line with the threat...you don’t see police riding into jaywalkers.”⁴⁸

Horses. Police mounted units have been used at Occupy protests relatively rarely, and the Research Team recorded only one case of horses used physically against protesters. On October 15, 2011, in the center of Times Square, in an incident visible to the thousands of protesters present and witnessed by members of the Research Team, a number of officers in a mounted unit rode their horses directly into the crowd, causing panic and fear among those present.⁴⁹

3. Restraints: Flex Cuff Injuries

The vast majority of Occupy Wall Street arrests have been effected through the use of plastic handcuffs, often called “flex cuffs” or “zip-tie cuffs.” Flex cuffs have notable advantages for police during mass arrest or protest situations, primarily because their lighter weight means one officer can carry many at once. Officers present at Occupy protests are often observed with numerous white flex cuffs dangling from their uniforms.

⁴³ Table entries 116, 177.

⁴⁴ Interview with protester (ZZY99) (2012).

⁴⁵ Alleged incidents occurred on October 5, 15; and November 30. *See* Table. *See also* Interview with protester (ZZY99) (2012) (witnessed an officer on a scooter run into a bystander as they tried to cross the street); Interview with J.A. Myerson (Journalist) (2012) (stating that during a march, he was hit in the back of a leg by a police scooter, without warning; he did not know if it was intentional or not).

⁴⁶ Table entries 24, 29, 67, 97, 124.

⁴⁷ Table entry 97.

⁴⁸ Interview with protester (NNN44) (2012). *See also* Interview with journalist (AAA88) (2012) (describing scooters as “scary” and a “herding tool,” and that he had witnessed “reckless” police driving).

⁴⁹ Table entry 34.

The dangers of flex cuffs, however, are well known, and, as described above, if applied too tightly, they have the potential to injure.⁵⁰ Despite these known risks, individuals arrested at Occupy protests have repeatedly reported that flex cuffs have been applied—either intentionally or carelessly—painfully tightly. While a number of witnesses reported that officers immediately or eventually replaced tight handcuffs upon complaint,⁵¹ others stated that repeated requests were required before action was taken, or that complaints were ignored and tight handcuffs were left on for extended periods.⁵²

In one clear example from March 24, video shows a protester lying on the street, flex cuffed, with numerous officers standing nearby. The protester, who did not attempt to resist or move away from police, can be seen or heard asking for the flex cuffs to be removed or loosened at least 10 times. Video shows the officers, any one of whom could easily have replaced the cuffs, neither inspect them nor respond to the protester’s complaints.⁵³ At one point, the protester called out, “Please loosen my handcuffs, I cannot feel my hands. I’m in excruciating pain. I’m begging you please, take my handcuffs off.” He later said, “I told you not to put them on too tightly. I already have nerve damage from the last time you put them on this tightly.”⁵⁴

One attorney who has witnessed at least 30 Occupy protests stated that people “routinely” complained about the “tightness of cuffs.”⁵⁵ As would be expected, this has resulted in many reports of pain, bruising, lacerations, and numbness.⁵⁶ One civil rights attorney, with knowledge of similar complaints during and after the use of flex cuffs at the 2004 Republican

⁵⁰ See e.g., Gerry McNeilly, Independent Police Review Director, *Policing the Right to Protest: G20 Systemic Review Report*, OFFICE OF THE INDEPENDENT POLICE REVIEW DIRECTOR (Canada), at 238 (May 2012). See also id. at 241 (recommending that the use of flex cuffs be discontinued or “used only in immediate situations of mass arrest in the field” and that they “should be applied only for short duration”).

⁵¹ Interview with credentialed journalist (XXX33) (2012) (describing her handcuffing as “very tight” and “painful,” and noting that the officers in her case “reacted pretty quickly” to her complaints about the flex cuffs and cut them off and replaced them).

⁵² See Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012) (noting that requests to loosen cuffs are often ignored). See also greekcabanaboy, *Occupy Wall Street Violence... Are We Free?*, YOUTUBE (Sept. 21, 2011), <http://www.youtube.com/watch?v=nbOXXOrx6FY> (displaying a protester bound with flex cuffs who was left on the ground and then carried off to a police van; the video showed that the protester’s fingers were bloody and that his hands were discolored, as if circulation was being cut off; at 2:06, the protester stated “this is really, really tight, it’s . . . cutting circulation off [of] my hands. It hurts a lot.”); NewYorkRawVideos, *Arrests at M24 Protest Police Brutality / Fire Ray Kelly March March 24 2012 Occupy Wall Street*, YOUTUBE (Mar. 25, 2012), <http://www.youtube.com/watch?v=45VsFdu0Qq0> (documenting a protester’s repeated requests to have his handcuffs removed or loosened at 4:03, 4:17, 4:49, 4:58, 5:06, 5:32, 5:55, 6:05, 6:29, and 7:09). For other incidents involving alleged tight flex cuffs, see Table entries 4, 17, 60.

⁵³ It is not known if officers subsequently replaced the cuffs.

⁵⁴ Table entry 119.

⁵⁵ Interview with Bina Ahmad (Lawyer) (2012).

⁵⁶ Interview with Martha Rayner (Professor and lawyer) (2012) (stating that one her clients, an Occupy protester, had flex cuff injuries); Interview with live streamer (497AB) (2012) (stating that a lot of people report feeling numbness in their hands, and particularly in their thumbs, after being flex cuffed); Interview with protester (NNN44) (2012) (described that when he was cuffed, he “requested repeatedly” for the flex cuffs to be cut and re-applied more loosely. Cops ignored him for a while, and then eventually did so. Described pain and “feeling numb” while the cuffs were on. Afterwards, had reduced feeling in the base of his right thumb for over a month, and “tingly feeling” in his fingers); Interview with protester (QQQ11) (2012) (witness did jail support over ten times, and reporting that many protesters released from jail had flex cuff injuries. She reported seeing “a lot of wrist injuries and damage from cuffs” and reported that “lots of people have said they have lost feeling or mobility from the cuffs.” She described witnessing injuries such as bruises and reported nerve damage); Interview with legal observer (ZZZ11) (2012) (describing observing while doing jail support frequent lacerations, bruising and numbness of protesters released from custody; describing taking a protester to the emergency room with severe flex cuff injuries); John Farley, *Jailed for covering the Wall Street protests: Getting arrested alongside citizen journalists gave me a taste of the risks these non-professionals take*, SALON (Sept. 28, 2011, 7:37 AM), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ (last visited April 17, 2012) (reporting that an arrested bystander was “in visible pain from the plastic handcuffs”).

National Convention (RNC) protests, stated, “At this point, it is beyond negligence that the department keeps using them without adequate training and supervision.”⁵⁷

4. Delays and Denial of Medical Care

While police are required by their Patrol Guide to provide or secure appropriate medical attention to individuals injured by police force or restraints,⁵⁸ a number of allegations of medical care delays or denial were reported:

- In one incident on **September 20**, for example, police arrested a protester who repeatedly called out that he had asthma and needed his inhaler. The police did not provide it; a bystander holding an inhaler offered it to the police twice and each time, an officer responded “not yet.” More than a full minute passed before the police allowed the arrested individual access to the inhaler.⁵⁹
- On **September 24**, police appeared not to offer any medical assistance to women who had been pepper-sprayed, despite repeated requests.⁶⁰
- A **May 30** incident in which officers intentionally grabbed and pushed a protester’s injured shoulder is described above.
- In addition, and as described above, in *none* of the known cases of pepper spray use did the police offer any known decontamination assistance.

One widely reported incident occurred on **March 17**, when a woman appeared to suffer a seizure when arrested. Numerous videos show her convulsing on the ground while handcuffed. One witness described feeling “dumbfounded” as he watched her head bang against the ground repeatedly as officers did nothing; he said that he called out repeatedly for the officers to place something under head.⁶¹ Individuals on the scene who said that they were EMTs and offered to assist were not permitted to do so by police.⁶² Estimates varied as to the length of time it took for an ambulance to arrive, ranging from 15 to 20 minutes.⁶³ While the general legal obligation of officers to secure timely medical assistance is clear, this obligation is heightened where officers plan a major and aggressive law-enforcement operation to remove a large number of protesters from an area. In such cases, where there is

⁵⁷ Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012).

⁵⁸ NYPD PATROL GUIDE, 2011-A EDITION (01/11) at 212-53.

⁵⁹ See LibertyPlazaRev, “*I Can’t Breathe!*” - Police Shoving at 10:30AM at Liberty Plaza #Occupywallstreet, YOUTUBE (Sept. 20, 2011), <http://www.youtube.com/watch?v=ck5fgzK24hg&feature=related>.

⁶⁰ See witsendnj, *Occupy Wall Street 9/24 - Woman Dragged, Girls Pepper Sprayed*, YOUTUBE (Sept. 25, 2011), <http://www.youtube.com/watch?v=AD5z4x5tH1o> (showing people helping the women with cups of water; at 8:13, the police completely ignore a request for a medic).

⁶¹ Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

⁶² Lydia Warren & Louise Boyle, *Re-occupied: Protesters strike back after dozens of arrests in Zuccotti Park after one activist ‘suffers seizure after she is beaten up by police’*, DAILY MAIL (Mar. 19, 2012, 7:25 AM), <http://www.dailymail.co.uk/news/article-2117300/Cecily-McMillan-Occupy-Wall-Street-protesters-strike-activist-suffers-seizure-beaten-police.html>.

⁶³ See e.g., *Police Arrest 73 in Occupy Wall Street Crackdown as Protesters Mark Six Months Since Uprising Began*, DEMOCRACY NOW! (Mar. 19, 2012), http://www.democracynow.org/2012/3/19/police_arrest_73_in_occupy_wall (showing Amy Goodman interviewing Guardian journalist Ryan Devereaux: “What was really disturbing for a lot of people that were there on the scene was one incident with a young woman named Cecily McMillan who, witnesses say, suffered from a seizure. She was handcuffed in the street sidewalk area near the entrance to the park. She was on the ground. Videotape seems to show her convulsing. You can hear people screaming to help her, to call 911. Witnesses that were there said that it took approximately 22 to 23 minutes for an ambulance to arrive. People were really disturbed that there were hundreds of police officers there and no paramedics, and also disturbed by the fact that you see a number of police officers standing around this young woman as she’s convulsing, and no one seems to be doing much of anything. I spoke to a young man who said he was a paramedic in—an EMT in Florida, who was disgusted by the way that McMillan was treated. He said her head wasn’t supported. Numerous witnesses that I spoke to said that her head was bouncing off the concrete. The paramedics said that she could have easily died. McMillan was taken from the scene by ambulance to a local hospital and then transferred to police custody.”).

an obvious risk of even inadvertent or accidental injury, officers should not move in unless they have EMTs on-site.

In addition, some injured protesters in police custody have reported that when they asked officers to take them to the hospital for medical care, the police said that they could go, but that doing so would result in their being held in custody for longer.⁶⁴

5. Unnecessary Police Force Violates and Suppresses Protest Rights

This report documents allegations of many incidents in which the evidence strongly suggests that police use of force was unnecessary and disproportionate, in violation of international law.

Aggressive force by police, whether simply unnecessary but mild, or shockingly excessive, has two clear effects. First, it immediately escalates tensions, inflames negative perceptions of police, and aggravates the risk of further arrests or violence. In this sense, the aggressive police approach radically undermines the stated goals of the police force—i.e., protecting the community. Second, it has a clear chilling impact, and undermines assembly rights by causing individuals to reasonably perceive that they cannot safely protest. Protesters either become constantly on guard for potential arbitrary police force, or decide to leave the assembly. One interviewee summarized a common sentiment: “When the cops do these aggressive arrests, it escalates everything; people have told me they support OWS but don’t want to go because of fear of arrest or being hurt.”⁶⁵

Protesters and witnesses who previously had few negative interactions with police described the police response to Occupy as transforming their perceptions of the NYPD. A journalist who had witnessed numerous such incidents reflected:

My views of the police have absolutely changed....Covering this movement over the last eight months, the effect it has had—it has made me really aware that the police use tactics that include random seeming arrests, unnecessary force and violence, nonsensical orders....[Police] behavior has had an enormous effect on how protesters see the police. There is a real sense that the police are there to squelch the movement, rather than to prevent crimes taking place....Police have created an environment that is frightening for people.⁶⁶

A protester recounted that in the first days of Occupy, he frequently talked to the police, had an explicit intention of fostering dialogue, and thought, based on past experience and friendships with officers, that police generally protected people. However, after seeing police use batons against protesters without just cause, he said:

That was the moment for me—now I am afraid of police. I’d just never seen indiscriminate force like that. From that point on, for me, I view a police officer as someone who can take out their baton and beat me and face no repercussion. Talking about it even now, I’m having a physical reaction. My chest has tightened up....When I talk to friends in the Bronx, they say, “Yeah, welcome to my world.”

⁶⁴ Interview with Meg Maurus (Lawyer) (2012).

⁶⁵ Interview with independent journalist and teacher (SSS88) (2012). *See also* Interview with livestreamer (497AB) (2012) (noting that police in New York just “escalate, escalate, escalate,” and comparing to police in Philadelphia, who he had witnessed negotiating with protesters and attempting to play a de-escalating role); Interview with Meg Maurus (Lawyer) (2012) (noting poor de-escalation by police).

⁶⁶ Interview with journalist (AAA88) (2012).

You see the same kinds of tactics of overpolicing in minority communities. I feel like [police have] instituted broken windows against Occupy.⁶⁷

A graduate student in social work who attended numerous marches and spent time at Zuccotti Park stated, “It is a shock when you expect police to protect you, but you see them beat people.” He said that he grew up thinking that cops are “the good guys,” but that when “you see them beat people for no reason, it changes your world. You don’t feel safe.”⁶⁸

Chapter Two: Overpolicing and Poor Communication

The specific incidents of alleged aggressive force described in this report occur in a general context of overpolicing and poor communication.

The NYPD has been present in large numbers during every major Occupy event. Protests, especially marches, are typically accompanied by a heavy police presence, often including large numbers of Community Affairs police, regular police officers in blue shirts, senior officers (Lieutenant and above) in white shirts, officers on scooters (sometimes, but rarely, also on horseback), as well as surveillance police from the NYPD’s Technical Assistance Response Unit (TARU). Officers wearing uniforms clearly marked “NYPD Counter-Terrorism” and “NYPD Disorder Control Unit” have frequently also been present, including at entirely peaceful protest marches.⁶⁹

Marches are most frequently accompanied by officers in the best practice recommended “soft” uniforms,⁷⁰ although officers are often observed holding out their batons in an intimidating manner. Occasionally, officers in visibly threatening “hard” uniform (e.g., body padding, helmets, shields) have attended protests, including small protests posing no evident threat.⁷¹

At times, the number of officers on hand has rivaled or even exceeded the number of protesters.⁷² Repeatedly, the number of visible police was manifestly excessive in comparison to both the peaceful nature of the assembly and the number in attendance at the protests. For example:

- On **February 29, 2012**, a journalist reported that approximately 30 protesters were monitored by 40 officers when marching from Union Square to Zuccotti Park.⁷³
- On **March 14, 2012**, an estimated 100 protesters were accompanied by “at least as many police,” during a march.⁷⁴
- One independent journalist described a march on April 1, 2012, as having a two-to-one ratio of police to protesters.⁷⁵

⁶⁷ Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

⁶⁸ Interview with protester (NNN44) (2012).

⁶⁹ See alexhiggins732, *#OccupyWallStreet -60 - NYPD Counter Terrorism At Liberty Park*, YOUTUBE (Sept. 27, 2011), http://www.youtube.com/watch?v=-NJQEDySQuY&feature=player_embedded#! (showing an NYPD Counter Terrorism officer at a protest).

⁷⁰ Part I, Chapter Three, “International Law and Protest Rights.”

⁷¹ This occurred on, for example, October 5, 2011, at Washington Square Park. Witnessed by members of Research Team.

⁷² See also NYCLU, *Free Speech Threat Assessment # 1* (March 17, 2012-April 10, 2012), available at www.nyclu.org/protest (stating that “hundreds of police were deployed to barricade Union Square at midnight ... often far outnumbering the number of pedestrians present.”).

⁷³ See Christopher Robbins, *Videos: NYPD Randomly Arrests Occupy Wall Street Protesters at Zuccotti Park*, GOTHAMIST (Feb. 29, 2012), http://gothamist.com/2012/02/29/video_police_arrest.php#photo-1.

⁷⁴ See Natasha Lennard, *Occupy, Furniture Unwelcome at BofA*, SALON (Mar. 16, 2012), http://www.salon.com/2012/03/16/occupy_unwelcome_furniture_at_bofa/.

⁷⁵ Interview with independent journalist and teacher (SSS88) (2012).

- On **April 20, 2012**, NYCLU documented that approximately 70 officers watched 40 protesters.⁷⁶ NYCLU has also documented a “wholly disproportionate” police presence at marches on May 30, June 6, and June 13.⁷⁷
- On **July 11, 2012**, at one point during a peaceful gathering at Zuccotti Park, at least 50 officers were visible at a peaceful assembly of, at most, 50 protesters.⁷⁸

Police in uniform have also been deployed to monitor even small “teach-ins” held by professors and others in public parks.⁷⁹ In interviews, protesters and journalists noted that the large number of officers at most protests was unnecessary, unwarranted, and intimidating, escalated tensions and led to a general feeling of harassment or suppression.⁸⁰ In the words of one journalist, the heavy police presence “speaks to an agenda that goes beyond the practical logistics of policing.”⁸¹ Members of the Research Team frequently observed the large police presence having an intimidating effect on both protesters and bystanders, who would often remark on and question the size of the police force. Where protests or assemblies were not policed, or policed only by a small number of Community Affairs officers, protests were markedly less tense, and individuals present expressed appreciation for the nonaggressive policing.

The aggressive and foreboding police presence at some Occupy events is compounded by typically poor communication between police and protesters, journalists, and legal observers. Some protesters themselves bear some of the blame for poor communications—some have yelled abuse at officers, often in response to arbitrary police force and arrests, but sometimes also without immediate apparent provocation.⁸² To their credit, many officers have shown restraint in not responding. In addition, when asked, many interviewees could recall specific instances of positive communication with individual police.⁸³ These friendly interactions have a positive impact on both protester perceptions of police and protester behavior.

However, the general trend, particularly following the eviction of Zuccotti Park on November 15, 2011, is for officers to seem unapproachable, noncommunicative, and, at times, entirely unreasonable.⁸⁴ Police infrequently approach protesters to engage in casual conversation or

⁷⁶ NYCLU, Free Speech Threat Assessment # 2 (April 11, 2012-April 28, 2012), *available at* www.nyclu.org/protest.

⁷⁷ NYCLU, Free Speech Threat Assessment # 4 (May 30, 2012-June 17, 2012), *available at* www.nyclu.org/protest.

⁷⁸ Witnessed by members of Research Team. *See also* Tweet by Ryan Devereaux (@rdevro) (Guardian journalist) TWITTER (July 11, 2012, 10.23pm), <https://twitter.com/rdevro/status/223241137257844736> (referring to a police/protester ratio of “about 1 to 1”).

⁷⁹ For example, on July 15, 2012 and July 21, 2012 in Washington Square Park. Witnessed by member of Research Team.

⁸⁰ Interview with journalist (AAA99) (2012) (the “number of police that show up - the sheer number of police that are there - seems unwarranted in relation to the number of protesters.”); Interview with graduate student (DDD55) (2012) (“[t]he sheer number of officers is. . . not necessary,” “[k]nowing there are so many police there in the first place keeps me away.”); Interview with independent journalist and teacher (SSS88) (2012) (there “is something that feels extremely violent about cops showing up in helmets and with cuffs”). Interview with protester (QQQ11) (2012) (referring to the feeling of harassment and that the large police presence “creates a general atmosphere of criminality”).

⁸¹ Interview with journalist (AAA99) (2012).

⁸² *See e.g.*, Interview with graduate student (DDD55) (2012) (noting that he had seen protesters being verbally provocative to police; but stating that “I’ve also said myself and seen others say ‘sorry’ and be extra polite to police.”). Numerous interviewees noted that police often displayed calm in the face of protester verbal abuse. *See e.g.*, Interview with protester (OOO33) (2012); Interview with protester (RRR99) (2012); Interview with documentary film-maker (WWW4) (2012).

⁸³ *See, e.g.*, Interview with J.A. Myerson (Journalist) (2012) (describing positive interactions with individual police, but noting that the police generally have a “posture of unfriendliness”); Interview with protester (XXW22) (2012) (describing an incident in which a protester swore at an officer. Another protester told the first protester to stop. The officer thanks the second protester for intervening.); Interview with protester (ZZY99) (2012) (describing friendly interactions); Interview with protester (JJJ88) (describing friendly interactions).

⁸⁴ *See, e.g.*, Interview with graduate student (DDD55) (2012) (describing having exchanged some basic pleasantries” with police, but stating that generally police “don’t really communicate,” and speculating that “police are told to largely remain quiet.”); Interview with protester (OOO33) (2012) (describing interactions with police: “the police are

the “meet and greet” strategies promoted in negotiated management protest policing.⁸⁵ Police communication is particularly poor around enforcement issues, and protester attempts to obtain clarity on applicable rules or laws are often met with silence or aggressive responses. One journalist who attended many protests noted:

There are so many opportunities for them to de-escalate, but they don’t do that, they often escalate....Communication between police and protesters is very poor. Some of that is probably inevitable, but I’ve never seen a good effort on the part of people to keep communication lines open.⁸⁶

Other journalists and lawyers also stated their views that that police tend not to engage in effective de-escalation of tense situations, with one journalist simply stating the NYPD are “good at *escalation*.”⁸⁷

Chapter Three: Obstruction of Press Freedoms and Documentation at Protests

Journalists have alleged significant infringements on their freedom from the beginning of the protests until the present, and even after an explicit police directive in late November 2011 reaffirming the obligation of the police to respect press freedoms. The rights of journalists to cover protest activity without undue state interference is protected under international law.⁸⁸ This includes the rights of credentialed members of the press, as well as noncredentialed journalists, bloggers, livestreamers, and others who publish their work.⁸⁹ The media are “the eyes and ears of the public, helping to ensure that the police are accountable to the people they serve.”⁹⁰

Journalists have been subject to arrest and threats of arrest, other deprivations of liberty, and physical violence during their coverage of the Occupy Wall Street protests. Journalists—both NYPD credentialed⁹¹ and noncredentialed—report that police have intentionally inhibited or blocked them from witnessing or recording events.

rude, they are mean, they treat you like dirt.”); Interview with J.A. Myerson (Journalist) (2012) (comparing NYPD communication and de-escalation with visits to Seattle and Washington, D.C., and noting that officers in other departments were far more approachable, friendly and reasonable); Interview with documentary film-maker (WWW44) (2012) (noting that officers who are friendly are “relatively rare” and “a definite minority”); Interview with protester (YYX11) (2012) (noting that police at Occupy Mineola, New York were more friendly than those in NYC, and would talk with protesters); Interview with protester (NNN44) (2012) (noting that friendly small talk with officers is rare); Interview with protester (ZZY99) (described often playing the role of mediator at protests, and intervening between protesters and officers to de-escalate tense situations. After many months of assuming that role, he stated that because of the many times he had been pushed and mistreated, and because of officers refusing to dialogue, he now rarely assumes that role: “They’re not open to talking, to mediating, to listening”); Interview with protester (KKK77) (2012) (stating that officers generally ignore him when he tries to engage them).

⁸⁵ Part I, Chapter Two, “Protest Policing Strategies: An Overview.”

⁸⁶ Interview with journalist (AAA99) (2012).

⁸⁷ Interview with J.A. Myerson (Journalist) (2012).

⁸⁸ Part I, Chapter Three, “International Law and Protest Rights.”

⁸⁹ Part I, Chapter Three, “International Law and Protest Rights.”

⁹⁰ HOUSE OF LORDS AND HOUSE OF COMMONS, JOINT COMMITTEE ON HUMAN RIGHTS, DEMONSTRATING RESPECT FOR RIGHTS? A HUMAN RIGHTS APPROACH TO POLICING PROTEST ¶ 200, Seventh Report of Session 2008-09, Vol. 1, HL Paper 47-I, HC 320-I (Mar. 23, 2009).

⁹¹ Journalists must apply to the NYPD for press credentials (“press cards”) in order to gain permission to cross police lines or other city-established barriers to cover breaking news or public events. See New York City, N.Y., Rules, Tit. 38, § 11-01 (detailing the application requirements).

1. Abuse of Press Freedoms During the Zuccotti Park Eviction

In New York City, the most egregious single example of police violation of the rights of the media to cover protests freely occurred during the November 15 Zuccotti Park eviction. In what was described as a “media blackout,” police refused to allow many journalists to remain in or near Zuccotti Park during the eviction, regardless of their accreditation.⁹² One local cable news reporter, for example, stated that: “Our crews had a very difficult time moving around between 1 a.m. and 4 a.m. Press passes seemed not to impress the cops on scene.”⁹³ A writer, after asserting that she was press, stated that she heard a police officer say, “not tonight.”⁹⁴ At least one reporter had a press pass confiscated.⁹⁵

Some journalists who were already in the vicinity of the park at the time of the police operation reported that they were threatened with arrest or arrested, or in other ways had their freedom to cover the protests curtailed. One journalist present reported that he identified himself as media but was nonetheless forcibly removed from the park by police, and told that reporters were limited to a designated “press pen.”⁹⁶ Some journalists described physical abuse. A *New York Times* journalist and a reporter for a local cable news channel stated that they witnessed police abuse a New York Post freelance reporter. The cable news reporter said the New York Post reporter was “thrown into a choke hold,” and she described the 20 minutes of confrontation with the police as “some of the scariest [minutes] of my life.”⁹⁷

In at least ten confirmed cases, police arrested journalists covering the protests, and the police response, on November 15, either at the time of the eviction or in related protests later that day.⁹⁸ Jared Maslin, a reporter for The Local East Village, was arrested near Zuccotti Park at around 2 a.m. and charged with disorderly conduct. He wrote that he repeatedly identified himself as a journalist to police, wore visible press credentials around his neck, and made every effort to comply with police orders while filming.⁹⁹ In his recorded videotape from the incident, he shouts, “I am a reporter. This is my press credential.” Among those he was arrested and transported to the police station with were an Agence France Presse

⁹² Dominic Rushe, *Occupy Wall Street: NYPD Attempt Media Blackout at Zuccotti Park*, GUARDIAN (Nov. 15, 2011), <http://www.guardian.co.uk/world/2011/nov/15/occupy-journalists-media-blackout>.

⁹³ Quoted in: *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS, (Nov. 15, 2011), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>.

⁹⁴ Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

⁹⁵ Garth Johnston, *Video: Police Arrest OWS Reporter As He Pleads “I’m a Reporter!”*, GOTHAMIST (Nov. 15, 2011, 4:27 PM), http://gothamist.com/2011/11/15/video_police_arrest_ows_reporter_sc.php; See also *Bloomberg’s Office Admits to Arresting Journalists for Covering OWS*, RT (Nov. 18, 9:24 PM), <http://rt.com/usa/news/press-nypd-arrest-bloomberg-689/> (last updated Nov. 19, 2011, 9:33 PM); Letter from George Freeman, Vice President and Assistant General Counsel, New York Times Company to Paul Browne, Deputy Commissioner of Public Information, New York Police Department (Nov. 21, 2011), available at <http://www.capitalnewyork.com/article/media/2011/11/4237084/new-york-media-organizations-demand-meeting-kelly-browne-about-zuccotti/> (“There are numerous other reports of DCPI-issued credentials being seized from reporters and photographers, others being interfered with, detained and arrested.”).

⁹⁶ Dominic Rushe, *Occupy Wall Street: NYPD Attempt Media Blackout at Zuccotti Park*, GUARDIAN (Nov. 15, 2011), <http://www.guardian.co.uk/world/2011/nov/15/occupy-journalists-media-blackout>.

⁹⁷ Dominic Rushe, *Occupy Wall Street: NYPD Attempt Media Blackout at Zuccotti Park*, GUARDIAN (Nov. 15, 2011), <http://www.guardian.co.uk/world/2011/nov/15/occupy-journalists-media-blackout>; Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

⁹⁸ Index of Arrests of Journalists and Others Documenting Occupy Wall Street, Appendix III. *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS (Nov. 15, 2011), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>.

⁹⁹ Jared Maslin, *Video: Reporter for The Local is Arrested During Occupy Wall Street Clearing*, N.Y. TIMES (Nov. 15, 2011), <http://eastvillage.thelocal.nytimes.com/2011/11/15/video-reporter-for-the-local-is-arrested-during-occupy-wall-street-clearing/>.

photographer and City Councilman Ydanis Rodriguez, who reported that his visible blood and bruises stemmed from his earlier encounter with the police.¹⁰⁰ A freelance journalist for NPR was arrested and charged with disorderly conduct; she was wearing a NYPD-issued press pass at the time.¹⁰¹ Others arrested covering the eviction included a credentialed news editor with DNAInfo.¹⁰²

Mayor Bloomberg, after the evacuation of the park, described the limitations on media coverage during the raid as intentional to “prevent a situation from getting worse and to protect the members of the press.”¹⁰³ Despite the widespread and consistent reporting of physical abuse in connection with the eviction, and the obstruction of media coverage, an NYPD spokesperson asserted that he saw “nobody...manhandled.” He asserted that the police allowed reporters on the outskirts of Zuccotti Park, but prohibited them from entering the inside of the park for their own safety.¹⁰⁴ He insisted obstruction of the press was not an issue: “If you see from the coverage, people got their shot.”¹⁰⁵

In demonstrations on the day of the eviction, after the clearance of the park, police arrested at least seven journalists. These included a reporter from the Associated Press, a reporter from the *Daily News*, and a photographer from DNAInfo.¹⁰⁶ The NYPD later said, “The reporter arrests at [Trinity Church] were voided.”¹⁰⁷

The president of the New York Press Club described the police treatment of the media during and after the eviction as “outrageous.”¹⁰⁸ The Committee to Protect Journalists issued a statement expressing “alarm”: “Journalists must be allowed to cover news events without fear of arrest and harassment. It is particularly disturbing that government officials sought to block any coverage of the event at all.”¹⁰⁹

Outraged by the treatment of journalists during the week of the eviction, media and advocacy organizations demanded a meeting with the NYPD to respond to the complaints of

¹⁰⁰ Andy Newman & J. David Goodman (eds.), *Updates on the Clearing of Zuccotti Park*, N.Y. TIMES (City Room Blog) (Nov. 15, 2011), <http://cityroom.blogs.nytimes.com/2011/11/15/updates-on-the-clearing-of-zuccotti-park/>; Jared Maslin, *Video: Reporter for The Local is Arrested During Occupy Wall Street Clearing*, N.Y. TIMES (Nov. 15, 2011), <http://eastvillage.thelocal.nytimes.com/2011/11/15/video-reporter-for-the-local-is-arrested-during-occupy-wall-street-clearing/>.

¹⁰¹ Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>; *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS (Nov. 15, 2011), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>.

¹⁰² Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

¹⁰³ Id.; Dominic Rushe, *Occupy Wall Street: NYPD Attempt Media Blackout at Zuccotti Park*, GUARDIAN, (Nov. 15, 2011), <http://www.guardian.co.uk/world/2011/nov/15/occupy-journalists-media-Blackout>;

¹⁰⁴ Brian Stelter & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

¹⁰⁵ Id.

¹⁰⁶ Interview with Paula Segal (Lawyer) (2012) (stating that she was present with a group of press on November 15, 2012, and none were let into Zuccotti Park).

¹⁰⁷ Index of Arrests of Journalists and Others Documenting Occupy Wall Street, Appendix III. Andy Newman & J. David Goodman (eds.), *Updates on the Clearing of Zuccotti Park*, N.Y. TIMES (Nov. 15, 2011), <http://cityroom.blogs.nytimes.com/2011/11/15/updates-on-the-clearing-of-zuccotti-park/>.

¹⁰⁸ Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html>.

¹⁰⁹ Gabe Pressman, *Open Letter to Mayor Bloomberg and Commissioner Kelly*, NEW YORK PRESS CLUB (Nov. 15, 2011), <http://www.nypressclub.org/coalition.php>.

¹¹⁰ *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS (Nov. 15, 2011), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>.

police violence against media and obstruction of press freedom.¹¹⁰ Signed by the New York Times Company vice president and assistant general counsel, the letter asserted that the NYPD “clearly violate[d its] policies and procedures as concerns the media.” The letter described the police treatment of journalists covering the protests over that period as “more hostile to the press than any other event in recent memory.”¹¹¹ The letter highlighted the segregation of journalists in a “press pen” obstructed further by the “strategic placement of police buses around the perimeter.” It recounted specific instances of physical abuse of journalists and unjustified arrests, and expressed concern about police “intentionally imped[ing] photographers as they were taking photos, keeping them from doing their job and from documenting instances of seeming police aggression.”¹¹²

In response to the letter, the Police Commissioner met with five signatories to the letter on November 23, and issued a directive to the City’s police officers warning that the police faced potential disciplinary action if they “unreasonably interfere with media access to incidents” or “intentionally prevent or obstruct the photographing or videotaping of news in public places.”¹¹³ Mr. Freeman described this as a “good first step.”

Yet there have continued to be numerous allegations of obstruction of media freedom subsequent to this directive, some of which are described below.¹¹⁴

2. Arrests of Journalists

Josh Stearns, who has been tracking arrests of journalists during Occupy Wall Street protests since the protests began, has documented at least 85 instances of police arrests of journalists in 12 cities across the country, including at least 44 in New York City on 15 different dates.¹¹⁵ This figure includes professional press, freelancers, photographers,

¹¹⁰ Joe Pompeo, *New York Media Organizations Demand Meeting with Kelly, Browne, About Zuccotti Park ‘Abuses’ of the Press*, CAPITAL (Nov. 21, 2011, 3:55 PM), <http://www.capitalnewyork.com/article/media/2011/11/4237084/new-york-media-organizations-demand-meeting-kelly-browne-about-zuccotti/>.

¹¹¹ Letter from George Freeman, Vice President and Assistant General Counsel, New York Times Company to Paul Browne, Deputy Commissioner of Public Information, New York Police Department (Nov. 21, 2011), available at <http://www.capitalnewyork.com/article/media/2011/11/4237084/new-york-media-organizations-demand-meeting-kelly-browne-about-zuccotti/> (in addition to George Freeman of the New York Times, signatories to the letter include the New York Post, the Daily News, the Associated Press, NBC Universal and WNBC-TV, Dow Jones, WCBS-TV, WABC-TV, and Thomson Reuters. The New York Civil Liberties Union sent a companion letter to the Mayor’s office).

¹¹² Letter from George Freeman, Vice President and Assistant General Counsel, New York Times Company to Paul Browne, Deputy Commissioner of Public Information, New York Police Department (Nov. 21, 2011), available at <http://www.capitalnewyork.com/article/media/2011/11/4237084/new-york-media-organizations-demand-meeting-kelly-browne-about-zuccotti/>.

¹¹³ Michael Calderone, *Occupy Wall Street Protests Heighten Tension Between Police and Media Nationwide*, HUFFINGTON POST (Dec. 1, 2011, 6:43 PM), http://www.huffingtonpost.com/2011/12/01/police-media-occupy-wall-street_n_1123866.html (last updated Dec 2, 2011, 7:38 PM); Joe Pompeo, *‘Times’ attorney, others meet with NYPD commissioners to discuss press ‘abuses’ during protests*, CAPITAL (Nov. 23, 2011, 3:35 PM), <http://www.capitalnewyork.com/article/media/2011/11/4267499/times-attorney-others-meet-nypd-commissioners-discuss-press-abuses-dur>; Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html>.

¹¹⁴ Michael Calderone, *Occupy Wall Street Protests Heighten Tension Between Police and Media Nationwide*, HUFFINGTON POST (Dec. 1, 2011, 6:44 PM), http://www.huffingtonpost.com/2011/12/01/police-media-occupy-wall-street_n_1123866.html (last updated Dec 2, 2011, 7:38 PM) (referencing police restrictions imposed on journalists covering an Occupy Wall Street protest outside a fundraiser for President Obama within days of the issuance of the directive).

¹¹⁵ Josh Stearns, *Tracking Journalist Arrests at Occupy Protests Around the Country, Part Two*, <http://storify.com/jcstearns/tracking-journalist-arrests-at-occupy-protests-aro>; Josh Stearns, *Tracking Journalist Arrests at Occupy Protests Around the Country, Part One*, <http://storify.com/jcstearns/tracking-journalist-arrests-during-the-occupy-prot>; Josh Stearns, *Journalists Arrested at Occupy Events Nationwide (chart)*, https://docs.google.com/spreadsheets/pub?hl=en_US&hl=en_US&key=0AqRq1hdSmsX3dGhIenNHRkt0czg5NUFMbUhmUktuQ1E&single=true&gid=0&output=html. The documented arrests include one on September 24 (multimedia

independent filmmakers, and citizen journalists. Members of the Research Team have verified many of these arrests, described in the **Index of Arrests of Journalists and Others Documenting Occupy Wall Street**, in Appendix III of this report.

One of the earliest arrests of journalists in New York City was the October 1 arrest of a freelance reporter for the *New York Times*, who was covering the arrest of more than 700 on the Brooklyn Bridge.¹¹⁶ Even subsequent to the November 23 directive to respect press freedoms, police have reportedly arrested representatives of the media—including livestreamers and a photographer who was photographing from the sidewalk with a tripod.¹¹⁷

3. Physical Abuse of Journalists

There are numerous reported instances of the NYPD assaulting members of the media, including:

- A journalist stated that on **October 14**, a detective punched him in the shoulder without warning while he was taking video. According to the journalist, the officer subsequently repeatedly refused to provide his name.¹¹⁸ The next day, on **October 15**, the same journalist was pushed up against a wall and threatened when he asked another officer for his name.¹¹⁹
- The November 21 letter of concern from members of the media, following the eviction, recounts three instances of physical abuse of journalists and photographers by police on **November 17**. In one case, a photographer wearing “clearly visible DCPI-issued press credentials” was “grabbed by a third officer and thrown to the ground, hitting her head on the pavement,” purportedly while she was in the process of trying to comply with commands from two other officers. Several hours later, according to the letter, a female journalist, “also displaying DCPI-issued press credentials,” was shoved by an officer, “forcing the reporter to fall backwards, landing on her right elbow, and resulting in her yelling in pain. The reporter said the officer then proceeded to pick her up by the collar while yelling ‘stop pretending.’” The reporter was treated at Bellevue Hospital for related injuries. The letter recounts another alleged incident in which two police also “came running towards” a photographer taking photographs from behind a metal barrier, “grabbed a metal barrier and forcefully lunged at him striking the photographer in the chest, knees and shin” while

web editor for WNET); four on October 1 (freelancer for New York Times; freelancer for Alternet; freelance photographer; and documentary filmmaker); one on October 27 (freelance photojournalist); eleven on November 15 (freelancer for NPR; freelancer for The Local East Village; video journalist for the Agence France-Presse; photographer for Vanity Fair; reporter for New York Daily News; reporter for Associated Press; photographer for Associated Press; news editor for DNAinfo, freelance photographer for DNAinfo; freelance video journalist for TV New Zealand; freelance photojournalist); two on November 17 (correspondent for Indyreader; journalist for WBAD); one on December 3 (freelance journalist); nine on December 12 (freelance journalist for Salon and Radio Dispatch; independent filmmaker; five livestreamers, including two members of OWS media team; two photographer citizen journalists); two on December 17 (photojournalist for Greg Palast and BBC; independent filmmaker previously working with PBS Point of View); two on January 1 (livestreamer for GlobalRevolution.TV; photographer); six on January 3 (6 livestreamers for GlobalRevolution.TV); one on January 29 (video journalist for WeAreChange.org); one on April 20 (photographer); one on April 25 (reporter); one on April 27 (photographer); and one on May 1 (photographer for jessicachornesky.com). See Index of Arrests of Journalists and Others Documenting Occupy Wall Street, Appendix III.

¹¹⁶ Al Baker et al., *Police Arrest More Than 700 Protesters on Brooklyn Bridge*, N.Y. TIMES (Oct. 1, 2011, 4:29 PM), <http://cityroom.blogs.nytimes.com/2011/10/01/police-arresting-protesters-on-brooklyn-bridge/> (Natasha Leonard, the reporter, was later released).

¹¹⁷ Index of Arrests of Journalists and Others Documenting Occupy Wall Street, Appendix III. See also Josh Stearns, *Journalists Arrested at Occupy Events Nationwide* (chart), https://docs.google.com/spreadsheets/pub?hl=en_US&hl=en_US&key=0AqRq1hdSmsX3dGhIenNHRkt0czg5NUFMbUhmUktuQ1E&single=true&gid=0&output=html.

¹¹⁸ Table entry 26.

¹¹⁹ Table entry 32.

“scream[ing] that he was not permitted to be taking pictures on the sidewalk.”¹²⁰

- On **December 12**, a radio host alleged that he was thrown to the ground and arrested while photographing and taking video of the arrest of a protester at the World Financial Center.¹²¹
- As described above, on **December 17**, a credentialed reporter wearing a visible media badge alleged that he was grabbed, then a “cop jammed a fist” into his throat and used him as a “de facto battering ram to push back protesters” despite his screams that he was a journalist.¹²²
- As described above, on **December 31–January 1**, one credentialed photojournalist stated that an officer shoved her against a wall.¹²³
- On **March 17**, a BBC reporter stated that police threw his colleague, a photographer, to the ground and beat him.¹²⁴

4. Other Obstructions of Press Freedoms

More generally, police have obstructed access to the scene of police encounters with protesters, obstructed the view of media, and frequently undermined the ability of media to observe and document protests. One interviewee expressed that the police seem to “go out of their way to obstruct the press.”¹²⁵ Another witness described a general perception that “cops try to block your view, shine lights in cameras, move you back, act threateningly.”¹²⁶

There are many reports of allegedly deliberate obstruction of journalists covering the protests. Members of the Research Team have often observed the police engaging in clear efforts to block visual access to arrests or police use of force while they are happening. Some of the reported incidents subsequent to the Police Commissioner’s directive concerning police relations with the media include:

- On **December 12**, a *New York Times* photographer reported that he was blocked repeatedly while attempting to view protests and the police response at the World Financial Center; video evidence supports his claim.¹²⁷
- On **December 31–January 1**, the NYPD refused a reporter access to Zuccotti Park.¹²⁸
- On **March 17**, at the six-month anniversary of the protests, journalists reported being forcibly moved from the scene, with police refusing to acknowledge their right to cover the events.¹²⁹

¹²⁰ Letter from George Freeman, Vice President and Assistant General Counsel, New York Times Company to Paul Browne, Deputy Commissioner of Public Information, New York Police Department (Nov. 21, 2011), *available at* <http://www.capitalnewyork.com/article/media/2011/11/4237084/new-york-media-organizations-demand-meeting-kelly-browne-about-zuccotti/>.

¹²¹ Table entry 69. *See also* BreakThruRadioTV, *OWS Arrest: John Knefel · BreakThruRadioTV [ep9]*, YOUTUBE (Dec. 16, 2011), <http://www.youtube.com/watch?v=lHuhWOUOqsw> (interviewing John and Molly Knefel, Co-Hosts, Radio Dispatch and providing partial video of the incident).

¹²² Table entry 73. *See also* Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html> (“I yelled, ‘I’m a journalist!’ and he kept shoving his fist and yelling to his men, ‘Push, boys!’”).

¹²³ Table entry 79.

¹²⁴ Table entry 103.

¹²⁵ Interview with community member who frequently attends OWS events (GGG33) (2012).

¹²⁶ Interview with protester (OOO33) (2012).

¹²⁷ *See* David Carr, *The Police, the Press and Protests: Did Everyone Get the Memo?*, N.Y. TIMES (Dec. 14, 2011, 12:21 PM), <http://mediadecoder.blogs.nytimes.com/2011/12/14/the-police-the-press-and-protests-did-everyone-get-the-memo/> (reporting and providing a video of the incident).

¹²⁸ Colin Moynihan & Elizabeth Harris, *Surging Back into Zuccotti Park*, N.Y. TIMES (Dec 31, 2011, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion> (reporting that “an officer and a guard blocked other protesters, and at least one reporter, from entering the park”).

¹²⁹ J.A. Myerson, *Re-Occupation and Police Raid of Zuccotti Park Set Tone for Radical Spring*, TRUTHOUT (Mar. 18, 2012, 9:58 AM), http://truth-out.org/index.php?option=com_k2&view=item&id=7332:reoccupation-and-police-raid-of

- On **March 24**, a journalist for *The Guardian* reported that “a plainclothes officer was seen blocking the camera of a *New York Times* photographer as he attempted to document an arrest.”¹³⁰

Some credentialed reporters have stated that when they have challenged shoving or pushing by the police, and asserted their media credentials, police have ignored or ridiculed the significance of the media or of press credentials, or threatened to retaliate against them. For instance, a *New York Times* journalist stated that an officer threatened to withdraw his press credentials when he asked another officer to stop pushing him.¹³¹ A credentialed journalist stated that a police officer told her that he “[did not] care” when she asked him to stop shoving her and asserted that she was press.¹³² One journalist without NYPD credentials stated that an officer called him a “nobody” on March 17, in response to the journalist telling the officer that he did not possess an NYPD-issued pass.¹³³

5. State Interference with Press Freedoms Violates International Law

Journalists have described the chilling effect created by police treatment of the press. One journalist said that after months of covering abuse and arbitrary police action: “I became constantly stressed, and anxious around cops. The experiences took an emotional toll.”¹³⁴ A credentialed journalist said in an interview:

You never know what is going to happen. You might get hurt. You might get arrested. Just trying to get pictures.¹³⁵

The many egregious and well-documented examples of state interference with the ability of journalists and others to document and publicize protests and the police response to them are clear violations of international law.

Chapter Four: Obstruction of Independent Monitoring by Legal Observers

Independent legal observers in New York have frequently had their work obstructed by the NYPD. The value of effective on-site independent monitoring at protests is internationally recognized. International organizations encourage cities or countries without legal observer programs to create them, and provide observer trainings around the world.¹³⁶ Legal observers monitor assemblies, marches, and other protest actions, and observe and record the details of any protest-related arrests or police abuse. If an arrest occurs, observers attempt to obtain and record the name, time, and location of the arrest. These basic details are tracked through the criminal justice system, and help ensure that *pro bono* counsel can

zuccotti-park-set-tone-for-radical-spring (journalist reported that a police captain “repeatedly shoved [him] away from the scene”).

¹³⁰ Ryan Devereaux, *Occupy Wall Street Demonstrators march to protest against police violence*, GUARDIAN (Mar. 25, 2012, 00.03 GMT), <http://m.guardian.co.uk/world/2012/mar/25/occupy-wall-street-protest-police?cat=world&type=article>; See also NewYorkRawVideos, *Arrests at M24 Protest Police Brutality / Fire Ray Kelly March March 24 2012 Occupy Wall Street*, YOUTUBE (Mar. 25, 2012), <http://www.youtube.com/watch?v=45VsFdu0Qq0>.

¹³¹ Michael Powell, *The Rules on News Coverage Are Clear, but the Police Keep Pushing*, N.Y. TIMES (Jan. 2, 2012), <http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html> (describing an incident in which a journalist asked a police captain to stop pushing him, prompting another officer to reply, “you got that press credential you’re wearing from us, and we can take it away from you”).

¹³² Interview with credentialed journalist (XXX33) (2012).

¹³³ Interview with J.A. Myerson (Journalist) (2012).

¹³⁴ Interview with Michael Tracey (Journalist) (2012).

¹³⁵ Interview with credential journalist (XXX33) (2012).

¹³⁶ Part I, Chapter Three, “International Law and Protest Rights.”

be assigned. Where necessary, legal observers also monitor police use of force and surveillance during protests, and gather on-site information at the time of any alleged or observed incidents.

In New York, legal observers are primarily provided by the National Lawyers Guild–New York City Chapter (NLG-NYC). Highly visible through the wearing of neon green hats and an “NLG Legal Observer” identity badge, legal observers have attended most of New York’s public Occupy assemblies, marches, and other actions. They have often also provided “Know Your Rights” trainings and legal education. Protest monitors have also been provided by the New York Civil Liberties Union (NYCLU), identified by blue NYCLU hats and shirts.

Legal observers are generally present at all Occupy public protests, and typically for the entire duration of the action. When police are simply present at protests—and not involved in issuing orders, enforcing laws (validly or otherwise), closing public space, dispersing assemblies, or arrests of protesters—police rarely interact or interfere in any way with the presence of legal observers.

However, when legal observers are most needed—particularly to observe the application by police of the law, or to document arrests or use of force—police have often obstructed them through poor communication, refusal to provide access, arrests, and use of force. Some legal observers have reduced or discontinued protest monitoring because of their treatment by police at Occupy protests. The Research Team documented the following forms of obstruction:

- **Use of force.** A number of incidents of alleged excessive force by police against Legal Observers have been reported. This includes: jabbing two female Legal Observers in the stomach with a nightstick (October 5); injuring the leg and face of a legal observer (October 14); grabbing and pushing, resulting in bruising (October 14); throwing a legal observer against a wall (November 15); throwing on top of the hood of a car (January 1); pushing to the ground, resulting in significant bruising and pain (January 29); and knocking to the ground (May 30).¹³⁷
- **Arrest and threats of arrest.** At least four legal observers in New York City have been arrested while observing arrests and protests.¹³⁸ They have also frequently been threatened with arrest—generally while attempting to document arrests, uses of force, and closures of public space, and sometimes for asking questions of officers. Legal observers monitoring Occupy protests were also arrested around the country,

¹³⁷ Table entries 21, 29, 28, 41, 85, 89, 125.

¹³⁸ Arrests took place on October 14, November 5, January 1, and April 27. See e.g., *[Update] Video: NYPD Scooter Runs Over National Lawyers Guild Legal Observer*, GOTHAMIST (Oct. 14, 2011), http://gothamist.com/2011/10/14/video_nypd_scooter_runs_over_nation.php (reporting and showing video of a legal observer whose leg appears to be run over by or trapped under a police scooter); *National Lawyers Guild–New York City Legal Observer Files Civil Rights Lawsuit Against the City of New York for His False Arrest and Imprisonment During New Year’s Day Occupy Wall Street Demonstration*, LAW OFFICE OF RANKIN & TAYLOR (Apr. 17, 2012), <http://drmtlaw.com/national-lawyers-guild-new-york-city-legal-observer-files-civil-rights-lawsuit-against-the-city-of-new-york-for-his-false-arrest-and-imprisonment-during-new-years-day-occupy-wall-street-demonstration/> (noting that a legal observer was arrested while recording the names of arrested protesters, and providing links to video of the arrest; the District Attorney declined to prosecute the legal observer at his arraignment); Interview with livestreamer (497AB) (2012) (witnessing and taking video of the January 1 arrest); Kingdvd74, *NYPD Entrapment of OWS Marchers New Years Eve*, YOUTUBE (Jan. 2, 2012), <http://www.youtube.com/watch?v=R2gWh5Tmwgs&feature=related> (documenting the January 1 arrest); Cliff Weathers, *Video: NYCLU Observer Arrested for Merely Observing #OccupyWallStreet*, NYALTNEWS (Apr. 28, 2012), <http://nyaltnews.com/2012/04/video-nyclu-observer-arrested-observing-occupywallstreet/15178/> (reporting the arrest of a legal observer on April 27; the observer was released later in the day without charges). See also NYCLU, *Free Speech Threat Assessment # 2* (April 11, 2012–April 28, 2012), available at www.nyclu.org/protest (documenting the arrest of the NYCLU Legal Observer).

including in Boston,¹³⁹ Oakland,¹⁴⁰ San Diego,¹⁴¹ Tampa,¹⁴² Asheville,¹⁴³ Santa Barbara,¹⁴⁴ and Minneapolis.¹⁴⁵

- **Restriction on observing arrests.** The ability of independent monitors to carry out basic functions—crucial to ensuring accountability and basic respect for expression and assembly rights—far too often depends on the negotiation skills of a volunteer legal observer and the individual discretion, personality, and will of an officer. When an individual is arrested, the legal observer’s primary responsibility is to obtain the arrestee’s name. Police rarely assist in this process, and have often actively obstructed it. One frequent legal observer described the ability to get names as “hit or miss,” depending often on the particular officer.¹⁴⁶ Many described great difficulty in getting access to arrestees.¹⁴⁷ If effective independent monitoring requires legal observers to cross police lines into “closed” areas, this should be facilitated, not obstructed, by police where it is reasonable and safe to do so. Indeed, there are a few notable examples where police facilitated monitoring behind police lines.¹⁴⁸

¹³⁹ *More on Occupy Boston Arrests*, OCCUPY BOSTON (Oct. 11, 2011), <http://www.occupyboston.org/2011/10/11/ap-rav-video-occupy-boston-protesters-arrested/> (Reporting 141 arrests, including a medic and clearly marked legal observers); *Police arrest scores of Occupy Boston protesters*, BOSTON.COM (Oct. 11, 2011, 7:18 PM), <http://www.boston.com/Boston/metrodesk/2011/10/boston-mayor-says-sympathizes-with-protesters-but-they-can-tie-the-city/GFmOU1qwApiGhBNsNSzMIL/index.html> (reporting that officers grabbed, dragged and arrested Urszula Masny-Latos, executive director of the National Lawyers Guild’s Northeast regional office, who was wearing a green hat which said “legal observer.”); *Occupy Boston Legal Observer arrested by Boston Police*, MATT WRIGHT PHOTOGRAPHY (Oct. 11, 2011), <http://mattwrightphoto.net/?p=1133> (Photograph of a legal observer’s arrest).

¹⁴⁰ Laura Hudson, *Cartoonist Susie Cagle on Her Tear Gassing and Arrest While Covering Occupy Oakland* [Interview], COMICS ALLIANCE (Nov. 8, 2011), <http://www.comicsalliance.com/2011/11/08/cartoonist-susie-cagle-occupy-oakland-arrest/> (Susie Cagle, a journalist and cartoonist was arrested and reports also seeing legal observers and journalists being arrested and detained for 15 hours after being charged with failure to leave the scene of a riot); SusieCagle, *Arrests 1am at Occupy Oakland* 11/3, YOUTUBE (Nov. 4, 2011), <http://www.youtube.com/watch?v=afcubFVMrMY> (appears to show legal observers being kettled and arrested).

¹⁴¹ Lisa Derrick, *Occupy San Diego Shut Down, Dozens of Arrests Including Legal Observer and Vets*, LA FIGA (Oct. 28, 2011, 7:55 AM), <http://lafiga.firedoglake.com/2011/10/28/occupy-san-diego-shut-down-dozens-of-arrests-including-legal-observer-and-vets/> (reporting that between 20 and 44 arrests took place in San Diego, including the media team, ex-military, and a legal observer); OccupySD99, *Police Disrupt J3 March Detain & Cite Legal Observer and Protesters - Occupy San Diego*, YOUTUBE (Jan. 4, 2012), <http://www.youtube.com/watch?v=LAirpvrubuzU> (shows legal observer arrested, but then released).

¹⁴² Cari Walsh, *Voices of the Arrested: Cari Welsh Questions Police Priorities and Details the Riverfront Arrests*, OPEN LETTER NEWS (Dec. 9, 2011, 3:43 PM), <http://openletternews.org/category/news/police-watch/> (Reporting that after arresting three occupy Tampa protesters, police release that a legal observer, Joseph Rhett Perry, was among those arrested).

¹⁴³ OccupyAsheville, *ACLU Board Member arrested while acting as Legal Observer 11-6-11*, YOUTUBE (Nov. 6, 2011), <http://www.youtube.com/watch?v=t3uayfMZNTY> (Showing legal observer’s arrest).

¹⁴⁴ Hoshwa, *Occupy SB Solidarity Protest Night 2: “Arrests Legal Observer, and others....”*, YOUTUBE (Oct. 11, 2011), <http://www.youtube.com/watch?v=dcuvMyFw27U> (Showing the arrest of a legal observer).

¹⁴⁵ Grace Kelly, *“We have more cops than bad people,”* MN PROGRESSIVE PROJECT (Apr. 13, 2012, 7:39 PM), <http://www.mnprogressiveproject.com/diary/11324/we-have-more-cops-than-bad-people> (reporting that the police tried to prevent people from taking videos and “took out” legal observers first); Grantorela, *Police Arrest OccupyMN Protester in Minneapolis Full Video!*, YOUTUBE (Oct. 15, 2011), <http://www.youtube.com/watch?v=0gB38vNS7Is&NR=1&feature=fvwp> (video of arrest).

¹⁴⁶ Interview with legal observer (ZZZ11) (2012).

¹⁴⁷ Interview with Paula Segal (Lawyer) (2012) (stating that when working as an Observer, she “definitely couldn’t cross police lines,” and that she was a “little scared of the police” and therefore stayed out of their way).

¹⁴⁸ For example: On October 1, after significant negotiation and attempts to remove legal observers, officers let a few Observers stay on the otherwise closed pedestrian walkway above the roadway to record the Brooklyn Bridge arrestee names. On December 12, after repeated requests and assurances, one officer facilitated a Legal observer’s access to an otherwise closed area to record the names of arrestees. On May 1, following a request, one officer allowed a legal observer to remain within a closed park area to record arrestee names. Upon request, the officer assigned a junior officer to the legal observer so that the Observer would not be arrested by other officers. However, different officers subsequently refused to let the legal observer close enough to the arrestees to record their names.

- ***Refusal to communicate or answer questions.*** Some officers engage in casual friendly conversation with legal observers, and when, at the start of a protest, legal observers introduce themselves to police officers in charge, officers typically introduce themselves in return. However, and particularly during marches, police frequently communicate poorly, if at all, with observers, especially around key concerns.¹⁴⁹

Legal Observer functions are a crucial component in helping to ensure that protest rights are respected, and that police are held to account for abuse or unlawful restrictions on the freedom of assembly. Frequent police actions hindering these functions have undermined the ability of Legal Observers to independently monitor protests, raising concerns about respect both for the rights of observers and of protesters.

Chapter Five: Police Surveillance

Many Occupy Wall Street protesters have expressed concerns regarding surveillance of their peaceful political activities by the government. Government surveillance of peaceful protests may impact the enjoyment of the right to protest, chill protesters' willingness to engage in lawful activity, and undermine privacy rights.¹⁵⁰ This section documents video surveillance at protests, plainclothes monitoring and infiltration, and interrogation and intimidation.

1. Surveillance

Video surveillance of protests by police has been ubiquitous and highly visible.¹⁵¹ The NYPD Technical Assistance Response Unit (TARU) engages in near-constant filming at OWS protests, regularly capturing on video protesters, bystanders, journalists, and legal observers. Members of the Research Team have observed TARU officers filming entirely peaceful assemblies and marches, and clearly zooming their video cameras on individual faces.¹⁵²

This has taken place from the beginning of the Occupy Wall Street protests until the present, including at entirely peaceful events. The police have also filmed those not connected to the protests—apparently intentionally. For example, on June 6, 2012, a member of the Research Team witnessed TARU officers filming a march about debt. As the march passed a large apartment building, numerous residents came to their windows to watch the protest. TARU officers began to film the bystanders at their own windows, zooming in to capture close-up footage.¹⁵³

In another example of gratuitous filming, on July 11, a protester fainted or fell ill in Zuccotti Park. An ambulance was called, and EMTs treated her. TARU officers filmed, up close, the

¹⁴⁹ One example highlights a common phenomenon. During a June 2012 protest, officers told a protester that she would be arrested if she blew on a whistle. The threat had not been made before, and in order to clarify what behavior might create a risk of arrest, a Legal Observer (and member of the Research Team) asked officers if there was a rule in place against using whistles. Two officers responded by threatening the observer with arrest. Another said he did not know, and if the observer had a problem, she should "ask the Mayor about it." Three refused to say anything. One officer did attempt to explain the legal basis, stating that whistles were unreasonable noise.

¹⁵⁰ See Part I, Chapter Three, "International Law and Protest Rights."

¹⁵¹ See Tana Geneva, *Why Is OWS Blanketed With NYPD Cameras -- And Are Police Breaking the Law?*, ALTERNET (Nov. 2, 2011), http://www.alternet.org/occupywallst/152896/why_is_ows_blanketed_with_nypd_cameras_and_are_police_breaking_the_law/.

¹⁵² See also NYCLU, Free Speech Threat Assessment # 1 (March 17, 2012-April 10, 2012), *available at* www.nyclu.org/protest; NYCLU, Free Speech Threat Assessment # 4 (May 30, 2012-June 17, 2012), *available at* www.nyclu.org/protest.

¹⁵³ Witnessed by member of Research Team.

entire medical treatment.¹⁵⁴ When asked why they were doing this, and how it complied with the law, a TARU officer said to a member of the Research Team, “I don’t have to tell you anything.”¹⁵⁵

On numerous occasions, when members of the Research Team monitored TARU filming practices, or asked about the intention of TARU officers engaged in filming, TARU officers responded with hostility or by turning their cameras on the Research Team member, making it known that they were recording, in a manner perceived to be intentionally intimidating.¹⁵⁶

In addition, for most of the duration of the around-the-clock encampment at Zuccotti Park, the police stationed a SkyWatch tactical platform unit—a “watchtower”—to provide near-constant surveillance of the protesters stationed below.¹⁵⁷ On at least one other occasion, a SkyWatch watchtower was installed to monitor protesters in a particular location other than Zuccotti Park—in Times Square for the October 15 “Global Day of Action” protest.¹⁵⁸

The NYPD is under court-ordered restrictions on the monitoring of protest groups as a result of prior constitutional and legal challenges to their actions. A 1985 agreement commonly known as the “Handschu Decree” prohibited the NYPD from investigating and collecting data on most legal political activity unless the NYPD had “specific information” that the person or group is connected to a crime committed or about to be committed.¹⁵⁹ In 2003, the court expanded the authority of the NYPD to conduct surveillance on political groups, in response to police requests that the court revisit the restrictions in light of purported terrorist threats subsequent to the attacks of September 11, 2001.¹⁶⁰

The court modified the Handschu Guidelines, but as a condition of allowing a modification, required the NYPD to adopt additional guidelines for conducting investigations of political activity which were modeled on post 9/11 guidelines adopted by the FBI. These substantially relaxed decades-old restrictions on NYPD political surveillance authority, but at their core, still required the presence of criminal activity to conduct investigations of First Amendment political activity.¹⁶¹ Soon after, the NYPD engaged in inappropriate police interrogations of protesters during 2003 anti-war protests. In response, the court criticized the NYPD’s actions, yet nonetheless upheld the NYPD’s newly renewed surveillance authorities.¹⁶²

While the NYPD’s legal capacity to conduct surveillance on political groups significantly expanded following the judicial decision, its powers remain clearly circumscribed. These include the powers to conduct video surveillance. A 2007 internal NYPD memo governing the use of photographic or video equipment to record public activities, intended to be consistent with the recent judicial decisions, requires that use of photography or video by the

¹⁵⁴ Witnessed by member of Research Team.

¹⁵⁵ Witnessed by member of Research Team.

¹⁵⁶ Witnessed by members of Research Team.

¹⁵⁷ See ICX tactical platforms, *sky watch: Force Multiplier*, <http://skywatch.readyhosting.com/products/skywatch/>.

¹⁵⁸ See Tana Geneva, *Why Is OWS Blanketed With NYPD Cameras -- And Are Police Breaking the Law?*, ALTERNET (Nov. 2, 2011), http://www.alternet.org/occupywallst/152896/why_is_ows_blanketed_with_nypd_cameras_and_are_police_breaking_the_law/.

¹⁵⁹ *Handschu v. Special Servs. Div.*, 605 F. Supp. 1384, 1420-24 (S.D.N.Y. 1985) (*Handschu II*), *aff’d* 787 F.2d 828 (2d Cir. 1986) (*Handschu III*). See also *Handschu v. Special Services Division*, 273 F. Supp. 2d 327, 420-21 (S.D.N.Y. 2003) (*Handschu IV*).

¹⁶⁰ *Handschu v. Special Services Division*, 273 F. Supp. 2d 327 (S.D.N.Y. 2003) (*Handschu IV*). The “Modified” Handschu Guidelines are comprised of two documents.: 273 F.Supp.2d at 349-351 and 288 F.Supp.2d at 420-431.

¹⁶¹ *Id.*

¹⁶² In 2007, however, the court did explicitly incorporate its earlier modification into the original judgment, in response to the evident NYPD violations. *Handschu v. Special Services Division*, 288 F. Supp. 2d 411 (S.D.N.Y. 2003) (*Handschu V*); *Handschu v. Special Services Division*, 475 F. Supp. 2d 331 (S.D.N.Y. 2007) (*Handschu VI*).

police be for limited “permissible operational objectives.”¹⁶³ The primary intended purpose and permissible justification for recording at public events is “when it reasonably appears that unlawful conduct is about to occur, is occurring or has occurred during the demonstration.”¹⁶⁴ According to the guidelines, permissible recording “should commence only when there is a reasonable belief that criminal or unlawful activity is about to occur or when spontaneous criminal or unlawful activity actually occurs or has occurred.”¹⁶⁵

The two other permissible justifications for recording public events are for the preparation of “training materials on proper crowd control techniques,” or for the “continuous[] assess[ment of] crowd conditions, through the use of live video transmissions, for the proper deployment of public resources.”¹⁶⁶ Where the recordings are for a purpose other than to record unlawful activity, the police should avoid “close-ups of participants in the demonstrations, but should focus on crowd size, police tactics and/or behavior.”¹⁶⁷

In light of these restrictions, the NYCLU expressed concern in October 2011 about the constant video surveillance of Occupy Wall Street protests.¹⁶⁸ In a letter to the Commissioner of Police, the NYCLU stated that the NYPD was overstressing its surveillance authority by placing “at least two special cameras trained on the park and apparently recording activity at all times” and its use of TARU members “at the park and other locations . . . conspicuously and routinely videotaping protest activity.”¹⁶⁹ The NYCLU alleged that the NYPD appeared to be targeting Occupy protesters for surveillance in a way that was distinct from the NYPD treatment of other more traditional protest groups, such as labor groups, regardless of otherwise identical conduct and even in the same marches.¹⁷⁰

The omnipresent video surveillance at Occupy Wall Street protests chills lawful protest activity.¹⁷¹

Plainclothes police also infiltrate or monitor Occupy Wall Street protesters’ actions. Members of the Research Team have often observed plainclothes officers marching with protesters; their identities subsequently become clear because they are later observed effecting arrests and engaging in other police work with uniformed officers.

In one prominent reported example, on November 17, soon after the eviction, two plainclothes police officers were discovered inside a United Methodist church where protesters were sleeping. One of the officers appeared to be “counting heads”; the men left when confronted. One was identified as currently or previously employed by the NYPD

¹⁶³ N.Y.C. Police Dep’t, Interim Order: Revision to Patrol Guide Procedure 212-71, ¶ 2 (Apr. 13, 2007), *available at* http://www.nyclu.org/files/releases/Handschu_NYPDInterimOrder22_11.10.08.pdf.

¹⁶⁴ *Id.*

¹⁶⁵ N.Y.C. Police Dep’t, Interim Order 22: Revision to Patrol Guide Procedure 212-71, ¶ 2-3 (“Additional date”) (Apr. 13, 2007), *available at* http://www.nyclu.org/files/releases/Handschu_NYPDInterimOrder22_11.10.08.pdf.

¹⁶⁶ *Id.* at ¶ 2.

¹⁶⁷ *Id.* at ¶ 2-3 (“Additional Data”) (“[V]ideorecordings/photographs should be consistent with the permissible operational objective. For example, videorecordings/photographs taken for training purposes or to assess crowd conditions should generally not contain close-ups of participants in the demonstrations, but should focus on crowd size, police tactics and/or behavior. When the permissible objective is to record unlawful activity and/or arrest activity, videorecording/photography should commence only when there is a reasonable belief that criminal or unlawful activity is about to occur or when spontaneous criminal or unlawful activity actually occurs or has occurred.”).

¹⁶⁸ Letter from Chris Dunn, Associate Legal Director, NYCLU, to Ray Kelly, Commissioner, New York Police Department (Oct. 20, 2011), *available at* <http://www.rawstory.com/rs/2011/10/20/new-york-civil-liberties-union-stop-blanket-surveillance-of-occupy-wall-st/>.

¹⁶⁹ *Id.*

¹⁷⁰ *Id.* (“For instance, at the October 5 march from Foley Square, an NYCLU observer noted that TARU members started filming everyone on the march behind the organized labor contingent, even though there was no discernable difference between the two segments of the march.”).

¹⁷¹ *See* Part I, Chapter Three, “International Law and Protest Rights.”

Intelligence Division. Paul J. Browne, NYPD's chief spokesman, stated that the police were simply using the bathroom. Ministers at Judson Memorial Church, where protesters were also staying, believed that they also had received visits from plainclothes police officers, but did not confront them.¹⁷²

2. Interrogations and Intimidation

There are various reported instances of police interrogations of protesters arrested or detained outside of the context of protests. Most such interrogations are believed to be by or with the NYPD Intelligence Division. In various reported cases, the interrogations delved into the protesters' engagement in protected speech and assembly in the context of Occupy. Some protesters subjected to these interrogations apparently described them as discomforting and intimidating.

For example, protesters reported being arrested away from protest activities on November 17, and interrogated by the NYPD Intelligence Division about their activities and future plans. According to the protesters, approximately 30 police officers stopped four people connected to Occupy Wall Street about 12 blocks away from a protest. One of the protesters was buying coffee, and three were in a nearby car. They alleged that the police brought them to the police station, and refused their requests for a lawyer.¹⁷³ One of the protesters reported that she was interrogated by the NYPD Intelligence Division "about her personal history, her relationship with other protesters, the nature of Occupy Wall Street and plans for upcoming protests." At least three of the four were initially charged, but the district attorney decided not to prosecute any of them. "I felt like I had been arrested for a thought crime," the protester stated to the *New York Times*.¹⁷⁴ In other instances, protesters charged with minor offenses were nonetheless interrogated by the Intelligence Division, and in some cases told that the interrogations were due to their involvement in Occupy Wall Street protests.¹⁷⁵

Various protesters also asserted that they were targeted by NYPD for intelligence information related to protests planned for May 1. Protesters highlighted the police use of prior outstanding warrants for minor noncriminal violations, such as bicycling on a sidewalk or possession of an open container of alcohol outside, to target political protesters.¹⁷⁶

In one egregious example, nine plainclothes police officers reportedly arrested a protester involved in Occupy Wall Street's internal communications for the May Day protests while he was returning home on May 1 after the protests. The police reportedly targeted the individual specifically, brought him to a station, interrogated him, and detained him for 13 hours in isolation. When he was brought before a judge, he learned that the arrest was as a result of two supposed 2007 open warrants for public urination—warrants that belonged to a different man with the same name, with a different birthdate and address.¹⁷⁷ The charges were subsequently dropped but the protester described this experience as intimidating: "Even if you're not doing anything wrong, we're watching."¹⁷⁸

¹⁷² See e.g., Sharon Otterman, *Occupy Wall Street Protesters, Even in Churches, Can't Escape Watch of Police*, N.Y. TIMES (Nov. 18, 2011), <http://www.nytimes.com/2011/11/18/nyregion/occupy-wall-street-protesters-even-in-churches-cant-escape-watch-of-police.html>.

¹⁷³ Colin Moynihan, *Wall Street Protesters Complain of Police Surveillance*, N.Y. TIMES, (Mar. 11, 2012), <http://www.nytimes.com/2012/03/12/nyregion/occupy-wall-street-protesters-complain-of-police-monitoring.html>.

¹⁷⁴ Id.

¹⁷⁵ See Id.

¹⁷⁶ Alisa Chang, *Using NYPD Warrant Squads to Monitor Protesters May Violate Constitution: Experts*, WNYC (May 4, 2012), <http://www.wnyc.org/articles/wnyc-news/2012/may/04/using-police-warrant-squads-monitor-occupy-wall-street-protesters-may-be-unconstitutional-legal-experts-say/>.

¹⁷⁷ Id.

¹⁷⁸ Id.

At least a handful of other Occupy Wall Street protesters were similarly interrogated by police around the May 1 protests at different locations in the early hours of the morning.¹⁷⁹ Six police officers reportedly interrogated one protester at home at 6:15 a.m., after entering in order to respond to an open container warrant for his roommate.¹⁸⁰

Police Commissioner Raymond Kelly defended the use of minor outstanding warrants for intelligence gathering related to Occupy Wall Street as “obviously...a legitimate police function.”¹⁸¹ The pursuit of an open warrant is indeed legitimate aim. However, in these cases, and based on the amount of time the warrants stood unchecked, and the circumstantial evidence connecting the interrogations and arrests to specific political activity, the arrests and interrogation appear intended to gather intelligence on political activity. Indeed, to the knowledge of the Research Team, in all of the known cases, no new charges were brought subsequent to the interrogations.¹⁸²

In other instances, protesters affiliated with Occupy Wall Street have reported that police have visited their homes, or monitored buildings where protesters hosted private meetings,¹⁸³ or engaged in otherwise intimidating activities for no apparent reason outside of their engagement in protected political expression. For example, on December 16, the day before a significant planned Occupy protest, police officers were allegedly stationed outside of the homes of at least two Occupy Wall Street organizers in Brooklyn.¹⁸⁴

As recently as July 11, 2012, OWS-affiliated protesters reported surveillance and intimidation by uniformed police outside of the context of a designated protest. On July 11, a group self-identified as the “OWS Bike Coalition” established a makeshift bicycle repair station in Brooklyn to provide assistance to bicyclists. Soon after setting up, the group reported that police officers arrived and required that they leave, citing the absence of permits; they also reportedly “surveilled the activists as they disbanded.” After the Occupy protesters left, “cops in a van followed the group” as it walked to a member’s home a few blocks away.¹⁸⁵

In one especially egregious alleged incident of police intimidation, reports indicated that police publicly posted a “Wanted” style poster for two Occupy activists. Yet the poster did not accuse the activists of any crime. Rather, it stated that the “subjects’ MO” is to film officers. Indeed, the two activists did frequently film police on the streets, a legal activity.. The police

¹⁷⁹ See Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012).

¹⁸⁰ Alisa Chang, *Using NYPD Warrant Squads to Monitor Protesters May Violate Constitution: Experts*, WNYC (May 4, 2012), <http://www.wnyc.org/articles/wnyc-news/2012/may/04/using-police-warrant-squads-monitor-occupy-wall-street-protestors-may-be-unconstitutional-legal-experts-say/>.

¹⁸¹ Id.

¹⁸² Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012).

¹⁸³ Colin Moynihan, *Wall Street Protesters Complain of Police Surveillance*, N.Y. TIMES (Mar. 11, 2012), <http://www.nytimes.com/2012/03/12/nyregion/occupy-wall-street-protesters-complain-of-police-monitoring.html>.

¹⁸⁴ One protester reported that she arrived at her home, where organizers were having a private meeting, and found officers parked outside. Another protester arrived home on the same day, and officers stated that they intended “to conduct a ‘security check’ for a condition they would not identify,” followed her inside the entryway despite her refusal of permission to enter, and “threatened to arrest her for obstruction of government administration.” Colin Moynihan, *Wall Street Protesters Complain of Police Surveillance*, N.Y. TIMES (Mar. 11, 2012), <http://www.nytimes.com/2012/03/12/nyregion/occupy-wall-street-protesters-complain-of-police-monitoring.html>.

¹⁸⁵ Matthew Perlman, *NYPD ‘Intimidates’ Occupy Wall Street Bike Repair Crew into Disbanding*, N.Y. TIMES (July 11, 2012), <http://fort-greene.thelocal.nytimes.com/2012/07/11/nypd-intimidates-occupy-wall-street-bike-repair-crew-into-disbanding/>.

poster calls them “Professional Agitators,” and includes the photographs and home addresses of the activists.¹⁸⁶

3. Surveillance and Intimidation of Protesters Chills Protected Expression

The police surveillance in connection with Occupy Wall Street is in the context of growing scrutiny of the NYPD over the past year, following reports that the NYPD has conducted widespread surveillance of Muslim communities and protest groups, including outside New York State.¹⁸⁷ The NYPD actions described herein constitute a pattern of police surveillance of political protests, and intimidation of protesters engaged in protected expressive activity. The actions are not evidently directed at investigating or preventing criminal activity, and on the contrary, are likely to chill protected expressive activity.¹⁸⁸

Chapter Six: Zuccotti Park—Eviction, Park Closures, and Arbitrary Rules

Occupy protesters in New York City established their base in Zuccotti Park from September 17, 2011.¹⁸⁹ However, the City, the NYPD, and Brookfield Properties (the park’s owner) violently and without warning evicted the protesters and shut down the protest encampment on November 15, 2011. On at least two subsequent occasions, authorities again closed the park and evicted peaceful protesters without just cause. Further, Brookfield created, and Brookfield guards and the NYPD enforced, constantly shifting and arbitrary rules at the park against protesters.

International law protects all forms of peaceful assemblies, including protest camps and other continuing assemblies. These protections extend to public places accessible to everyone. Restrictions on protest rights may only be imposed where legal, and where necessary and proportionate to achieve a legitimate aim, including public health or safety or the protection of the rights of others. Any restrictions imposed must be the least restrictive means to secure the legitimate objective. In the limited circumstances where authorities may lawfully impose restrictions on or close a protest camp, international law requires that the method of eviction respect rights.¹⁹⁰

This section documents the eviction, subsequent park closures, and the evolving and arbitrary rules applied at the park from the start of the occupation up until the present day.

1. The Eviction

Shortly after protesters began their occupation of Zuccotti Park, Brookfield security guards distributed and posted new rules for the public’s use of the park.¹⁹¹ In the first days and

¹⁸⁶ Dan McCarthy et al., *They ‘Occupy’ NYPD’s Attention*, NEW YORK DAILY NEWS (July 2, 2012), http://articles.nydailynews.com/2012-07-02/news/32511985_1_poster-flyer-nypd.

¹⁸⁷ See *supra*, Part I, Chapter Two, Section 1, “Major U.S. Policing Issues: Policing of Racial and Religious Minorities and the Homeless.” See also Tom Hayes, *Activists Decry NYPD Monitoring Of Liberal Political Groups*, HUFFINGTON POST (Mar. 28, 2012), http://www.huffingtonpost.com/2012/03/29/activists-nypd-surveillance-liberal-groups-peoples-summit-jumaane-williams_n_1387533.html; *Documents Reveal NYPD Infiltrated Liberal Political Groups and Monitored Activists*, ASSOCIATED PRESS (Mar. 24, 2012), http://www.nj.com/news/index.ssf/2012/03/documents_reveal_nypd_infiltra.html; Feb. 3, 2006.

¹⁸⁸ See Part I, Chapter Three, “International Law and Protest Rights.”

¹⁸⁹ For background, see Part I, Chapter One, Section 1, “Occupy Wall Street: Evolution and Characteristics.”

¹⁹⁰ See Part I, Chapter Three, “International Law and Protest Rights.”

¹⁹¹ The prior posted rules in the park listed only “No skateboarding, rollerblading, or bicycling allowed in the park.” The new rules included prohibitions on camping and the establishment of tents or other structures; lying down on the ground or on benches; placing tarps or sleeping bags or other materials on the property; and the storage of personal materials in any way that interferes with the use of the space by others. See Lisa Foderaro, *Zuccotti Park*

weeks of the occupation, most of these new rules were largely unenforced. And, for the most part, uniformed police stayed only on the outskirts of the park.¹⁹² On some occasions, police entered the park to threaten or make arrests and to remove tarps or tents, but lying down and sleeping were essentially permitted. When tents began to appear in mid-October 2011, for the most part, neither Brookfield nor the police acted to remove them.¹⁹³

First attempted eviction. On October 11, Brookfield Properties sent a letter to Police Commissioner Ray Kelly seeking NYPD aid to clean and inspect Zuccotti Park. Mayor Bloomberg reportedly made a surprise visit to the Park but did not speak at the General Assembly, and immediately after stated that he intended to comply with the Brookfield request, and would bring city police to facilitate the cleaning of the park at 7 a.m. on October 14.¹⁹⁴ He further stated that after the cleaning of the park, rules that Brookfield established subsequent to the start of the encampment—including a prohibition against sleeping in the park—would be enforced.¹⁹⁵

Concerned that the scheduled joint NYPD-Brookfield cleaning action was a pretext for an eviction, protesters extensively cleaned the park on October 13, and lawyers representing the protesters provided a written commitment to Brookfield to increase cleaning as necessary, “negotiate in good faith,” and “address any reasonable issues of sanitation safety and access...to prevent these issues from creating a pretext for police action in violation of [their] First Amendment rights to utilize the Park.”¹⁹⁶ Protesters had already established a Sanitation Working Group, in which participants volunteered to be involved in cleaning the park’s grounds and bins, recycling, and picking up and discarding trash on a regular schedule.¹⁹⁷ Among other things, they constructed a greywater treatment system to recycle dishwater contaminants, using the filtered water for the plants and flowers in the park.¹⁹⁸

is Privately Owned, but Open to the Public, N.Y. TIMES (Oct. 13, 2011), <http://www.nytimes.com/2011/10/14/nyregion/zuccotti-park-is-privately-owned-but-open-to-the-public.html>; John Del Signore, *Brookfield Tells Protesters to Clear First Part of Park by 7 A.M.*, GOTHAMIST (Oct. 13, 2011, 2:22 PM), http://gothamist.com/2011/10/13/brookfield_tells_ows_protesters_to.php.

¹⁹² Andrew Grossman & Jessica Firger, *Against Rules, Tents Arise at Protest*, WALL ST. J. (Oct. 24, 2011), http://online.wsj.com/article/SB10001424052970204777904576649691966085946.html?mod=WSJ_NY_MIDDLELEADNewsCollection; See e.g., Christopher Robbins, *Tents Sprout Up in Zuccotti Park in Defiance of New Rules*, GOTHAMIST (Oct. 24, 2011, 6:04 PM), http://gothamist.com/2011/10/24/tents_sprout_up_in_zuccotti_park_as.php) (“[M]any activities that the protesters engage in ... are prohibited by the new rules, but have been tolerated by Brookfield. ‘That is none of our concern,’ a police spokesperson tells the WSJ, referring to the tents. ‘They have chosen not to enforce it. When I say enforce it, they haven’t asked us.’”).

¹⁹³ See e.g., Andrew Grossman & Jessica Firger, *Against Rules, Tents Arise at Protest*, WALL ST. J. (Oct. 24, 2011), http://online.wsj.com/article/SB10001424052970204777904576649691966085946.html?mod=WSJ_NY_MIDDLELEADNewsCollection.

¹⁹⁴ David Chen, *Protesters Are Told They’ll Have to Leave Zuccotti Park Temporarily*, N.Y. TIMES (Oct. 12, 2011), http://www.nytimes.com/2011/10/13/nyregion/protesters-told-they-will-have-to-leave-zuccotti-park-temporarily.html?_r=1.

¹⁹⁵ See Notice, *Brookfield Properties, Notice of Cleaning and Upkeep Operations to Commence Friday, October 14, 2011* (Oct. 13, 2011), available at <http://cap-dev.alley.ws/article/culture/2011/10/3730569/brookfield-confirms-no-more-sleeping-bags-or-lying-down-ground-zucco>.

¹⁹⁶ Letter from Margaret Ratner Kunstler, et al., Liberty Park Legal Working Group to Richard B. Clark, C.E.O., Brookfield Office Properties (Oct. 13, 2011), available at <http://ccrjustice.org/newsroom/press-releases/behalf-of-occupy-wall-street-protestors%3A-letter-ceo-of-brookfield-office-properties>.

¹⁹⁷ Id. (“The [Sanitation] Working Group will continue to bag and haul trash on a tight schedule. Trash has consistently been bagged and hauled to established collection points and recycling rules have been strictly adhered to. . . . Additionally, the Working Group typically has had between one and fifteen people sweeping the Park with brooms at any given time.”).

¹⁹⁸ See Dietvorst, *Occupy Wall Street’s greywater treatment system and “sanitation working group,”* SANITATION UPDATES (Oct. 10, 2011) <http://sanitationupdates.wordpress.com/2011/10/10/occupy-wall-streets-greywater-treatment-and-the-sanitation-working-group/>.

In response to the threatened eviction, many voiced support for the continued occupation and the assembly rights of the protesters. These included statements from the local Community Board, the Manhattan Borough President, the City's Public Advocate, and Jerrold Nadler, the U.S. congressional representative whose district includes the park.¹⁹⁹ Thousands of protesters and supporters arrived at Zuccotti Park on the morning of October 14, in advance of the designated time for the park's cleaning, to support the continued occupation.²⁰⁰ Less than one hour prior to the designated time, the city communicated, through a deputy mayor and reportedly at Brookfield's request, that it would not attempt to remove the protesters to effectuate cleaning.²⁰¹ The statement read: "Brookfield believes they can work out an arrangement with the protesters that will ensure the park remains clean, safe, available for public use, and that the situation is respectful of residents and businesses downtown."²⁰² Mayor Bloomberg expressed disappointment at the decision, and a continued interest in clearing the encampment.²⁰³

Fire concerns. On October 28, fire officials, accompanied by community police, removed six gas generators and 13 fuel containers that provided power to the protesters. The Fire Department stated that New York City law prohibited the gas canisters and generators in that environment, and they presented a danger to the public.²⁰⁴ The City reported that the Fire Commissioner had issued a Violation Order to Brookfield requiring that it remove the combustible materials and clear obstructions to permit a path of exit from the park.²⁰⁵ Protesters expressed concern that this action, on the eve of an expected snowstorm, seemed

¹⁹⁹ Azi Paybarah, *Lawmakers urge Bloomberg to let protesters stay, with their sleeping gear*, CAPITAL NEW YORK (Oct. 13, 2011, 6:34 PM), <http://www.capitalnewyork.com/article/culture/2011/10/3733487/lawmakers-urge-bloomberg-let-protesters-stay-their-sleeping-gear/> (Rep. Jerry Nadler: "There should be no need for police to execute mass evictions"; Manhattan Borough President Scott Stringer, "There is no need to rush into hasty, precipitous action when it comes to the peace and safety of our community."); John Del Signore, *Brookfield Tells Protesters to Clear First Part of Park by 7 A.M.*, GOTHAMIST (Oct. 13, 2011, 2:22 PM), http://gothamist.com/2011/10/13/brookfield_tells_ows_protesters_to.php (Public Advocate Bill De Blasio: "This has been a peaceful and meaningful movement and the City needs to respond to it with dialogue. We have an obligation to protect New Yorkers' ability to freely exercise their First Amendment rights. For weeks now, the police and residents have shown consideration to the protesters, and that respect has been reciprocated. I am deeply concerned that the City has upended this balance by trying to unilaterally remove protesters and their effects from Zuccotti Park. The City and Brookfield Management must engage this movement to find a suitable compromise.").

²⁰⁰ John Del Signore, *Brookfield Tells Protesters to Clear First Part of Park by 7 A.M.*, GOTHAMIST (Oct. 13, 2011, 2:22 PM), http://gothamist.com/2011/10/13/brookfield_tells_ows_protesters_to.php.

²⁰¹ Colin Moynihan & Cara Buckley, *Cleanup of Zuccotti Park is Postponed*, N.Y. TIMES (Oct. 14, 2011, 7:04 AM), <http://cityroom.blogs.nytimes.com/2011/10/14/cleanup-of-zuccotti-park-cancelled/> (According to Mayor Bloomberg, Brookfield retreated from their intended clean-up plan, and their request for city assistance, following a series of appeals by unspecified elected officials. Mayor Bloomberg stated on his radio program, "[y]esterday, as of 8 o'clock at night, they were going ahead to do it, but, as of midnight, they called and said they wanted to postpone the cleaning operations.").

²⁰² Colin Moynihan & Cara Buckley, *Cleanup of Zuccotti Park is Postponed*, N.Y. TIMES (Oct. 14, 2011, 7:04 AM), <http://cityroom.blogs.nytimes.com/2011/10/14/cleanup-of-zuccotti-park-cancelled/>.

²⁰³ Colin Moynihan & Cara Buckley, *Cleanup of Zuccotti Park is Postponed*, N.Y. TIMES (Oct. 14, 2011, 7:04 AM), <http://cityroom.blogs.nytimes.com/2011/10/14/cleanup-of-zuccotti-park-cancelled/> (quoting Michael R. Bloomberg, Mayor, New York City as saying "My understanding is that Brookfield got lots of calls from many elected officials threatening them and saying, 'If you don't stop this, we'll make your life more difficult. If those elected officials would spend half as much time trying to promote the city and get jobs to come here, we would go a long ways toward answering the concerns of the protesters. . . . From our point of view, it will be a little harder, I think, at that point in time to provide police protection, but we have the greatest police department in the world and we will do what is necessary.").

²⁰⁴ Susanna Kim, *Occupy Wall Street Protesters March to Bank Offices: Generators Taken Away*, ABC NEWS (Oct. 28, 2011, 6:19 PM), <http://abcnews.go.com/blogs/business/2011/10/occupy-wall-street-protesters-march-to-bank-offices-generators-taken-away/> (quoting a statement from the Fire Department concerning the "dangerous conditions posed by the presence and/or use of flammable and combustible liquids and portable generators in a public space, which is prohibited under New York City law").

²⁰⁵ People's Reply to Amicus Curiae New York Civil Liberties Union and Defendant's Reply Affirmation in Further Support of Defendant's Motion to Dismiss at 6 People v Nunez, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (No. 2011NY082981).

designed to make the encampment unsustainable.²⁰⁶ They also claimed that they were provided no notice, despite a recent inspection of the campsite by the Fire Department, and a process that normally allows for an initial warning and an opportunity for corrective action.²⁰⁷ The Fire Department returned the generators to the protesters on November 8, but prohibited their re-entry inside the park.²⁰⁸ The generator use also raised concerns for protesters about fire safety. They stocked fire extinguishers, drafted a fire safety plan, and began to use bicycles for power.²⁰⁹

The November 15 Eviction. On November 15, in the middle of the night and without warning, the City raided Zuccotti Park and evicted the protesters. The NYPD amassed a large contingent of police who descended on the park from all sides, and closed streets that would have allowed public and press access to the park during the eviction. Many journalists reported that they were either denied entry or themselves evicted from the park, even where they had NYPD press passes.²¹⁰ The NYPD also prohibited legal observers from accessing the park. Thus, the night of the eviction was described by some as a “media blackout.”²¹¹

According to reports, police entered the park in riot gear and used pepper spray to clear protesters from the site.²¹² At least one photo appears to show a van-mounted Long Range Acoustic Device (LRAD).²¹³ The police reported that they arrested approximately 200 people, including 142 in the park and 50 to 60 in surrounding streets.²¹⁴ Those arrested reportedly

²⁰⁶ Esmé E. Deprez & Charles Mead, *New York Authorities Remove Fuel, Generators from Occupy Wall Street*, BLOOMBERG NEWS (Oct. 28, 2011, 5:16 PM), <http://www.bloomberg.com/news/2011-10-28/new-york-police-remove-gasoline-generators-from-occupy-wall-street-site.html>.

²⁰⁷ Adam Martin, *Occupy Wall Street Gets Its Generators Back*, ATLANTIC WIRE (Nov. 8, 2011), <http://www.theatlanticwire.com/national/2011/11/occupy-wall-street-gets-its-generators-back/44701/> (Legal counsel for the protesters alleged that “the normal procedure is for FDNY to give corrective feedback.” But in this instance, “they simply confiscated the generators and didn’t even list on the confiscation order what the specific violations were.”); Colin Moynihan, *With Generators Gone, Wall Street Protesters Try Bicycle Power*, N.Y. TIMES (Oct. 30, 2011, 9:07 PM), <http://cityroom.blogs.nytimes.com/2011/10/30/with-generators-gone-wall-street-protesters-try-bicycle-power/?scp=2&sq=zuccotti,%20generators&st=cse>; Matt Sledge, *FDNY and NYPD Remove Occupy Wall Street Generators; Protesters Charge Political Motivation*, HUFFINGTON POST (Oct. 28, 2011, 2:15 PM), http://www.huffingtonpost.com/2011/10/28/fdny-with-nypd-escort-rem_n_1063959.html (“fire safety officials had inspected their campground as recently as [the day before] without telling them the generators needed to go”).

²⁰⁸ Ben Yakas, *Occupy Wall Street Gets Their Generators Back, But FDNY Still Says They Aren’t Permitted*, GOTHAMIST (Nov. 9, 2011, 4:07 PM), http://gothamist.com/2011/11/09/occupy_wall_street_gets_their_gener.php.

²⁰⁹ *Draft Proposal for Thursday 11/10 General Assembly: Fire Safety*, NEW YORK CITY GENERAL ASSEMBLY (Nov. 9, 2011), <http://www.nycga.net/2011/11/09/draft-proposal-for-thursday-1110-general-assembly-fire-safety/> (establishing an OWS Fire Department, offering training, requiring compliance with fire department rules regarding generator distance from combustible materials, opening up paths of egress, among other things); Adam Martin, *Occupy Wall Street Gets Its Generators Back*, ATLANTIC WIRE (Nov. 8, 2011), <http://www.theatlanticwire.com/national/2011/11/occupy-wall-street-gets-its-generators-back/44701/#>.

²¹⁰ See e.g., *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS, (Nov. 15, 2011, 5:41 PM), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>; Brian Stetler & Al Baker, *Reporters Say Police Denied Access to Protest Site*, N.Y. TIMES (Nov. 15, 2011, 11:06 AM), <http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/>.

²¹¹ Dominic Rushe, *Occupy Wall Street: NYPD attempt media blackout at Zuccotti Park*, GUARDIAN, Nov. 15, 2011, 11:25 AM, <http://www.guardian.co.uk/world/2011/nov/15/occupy-journalists-media-blackout>.

²¹² See, e.g., Matt Wells & Peter Walker, *Occupy Wall Street: police evict protesters—as it happened*, GUARDIAN (Nov. 15, 2011, 12:20 EST), <http://www.guardian.co.uk/news/blog/2011/nov/15/occupy-wall-street-police-action-live>.

²¹³ <http://i.imgur.com/VI488.jpg>. See Alex Klein & Brett Smiley, *Breaking: Police in Riot Gear Evict Zuccotti Park [Updated]*, NEW YORK MAG (Nov. 15, 2011, 3:22 AM), <http://nymag.com/daily/intel/2011/11/police-in-riot-gear-ordered-protesters-out-of-park.html>.

²¹⁴ James Barron & Colin Moynihan, *Police Oust Occupy Wall Street Protesters at Zuccotti Park*, N.Y. TIMES, (Nov. 15, 2011), <http://www.nytimes.com/2011/11/16/nyregion/police-begin-clearing-zuccotti-park-of-protesters.html?pagewanted=all>.

included at least seven journalists²¹⁵ and Ydanis Rodriguez, a member of the New York City Council.²¹⁶

In the course of the eviction, city workers threw individual and communal property in the park into trucks, and transported it to a Department of Sanitation garage. This included a several thousand book strong “People’s Library,” much of which was destroyed, as well as many computers and other equipment.²¹⁷

In a flyer distributed to protesters at the site, the City asserted that it would allow protesters to return to the plaza as long as they complied with the Brookfield rules established after the start of the protest, including the prohibition against sleeping.²¹⁸

The Mayor and the NYPD faced a barrage of criticism for both the act of evicting the protesters, and the manner of the eviction. New York City’s Public Advocate, for instance, called the midnight evacuation “needlessly provocative and legally questionable.”²¹⁹ The City claimed the time of the raid, and the element of surprise, were intentional to “minimize the number of people in the park,” and insisted that any closure would be temporary.²²⁰ Protesters and their lawyers, as well as the media, expressed concern that the circumstances of the midnight raid were intended to minimize attention and access to a massive and contested police action against a high-profile protest.²²¹

Additionally, some commentators have raised concerns that the similar circumstances of many Occupy evictions across the United States suggested national coordination to close down the camps. New York City, for example, was one of numerous cities that, over a short time period, cleared encampments by evicting protesters in the middle of the night, citing similar justifications. National coordination issues will be addressed in a future report of the *Protest and Assembly Rights Project*.

Temporary restraining order. Within hours of the eviction, the protesters sought—and

²¹⁵ *Journalists obstructed from covering OWS protests*, COMMITTEE TO PROTECT JOURNALISTS (Nov. 15, 2011, 5:41 PM), <http://www.cpj.org/2011/11/journalists-obstructed-from-covering-ows-protests.php>. (alleging that some of those arrested had press credentials issued by the NYPD.).

²¹⁶ *Charges Dropped Against Councilman Arrested at Occupy Wall Street*, CBS NEWS (Apr. 5, 2012, 8:37 AM), <http://newyork.cbslocal.com/2012/04/05/charges-dropped-against-councilman-arrested-at-occupy-wall-street/>.

²¹⁷ See e.g., Michele Hardesty, *OWS and People’s Librarians File Federal Lawsuit against the City for 11/15 Raid on Zuccotti Park*, WORDPRESS (May 24, 2012), <http://peopleslibrary.wordpress.com/2012/05/24/ows-and-peoples-librarians-file-federal-lawsuit-against-the-city-for-1115-raid-on-zuccotti-park/> (Occupy Wall Street and several People’s Library librarians filed a lawsuit challenging the seizure, damage and destruction of the library); Karen McVeigh, *Destruction of Occupy Wall Street ‘People’s Library’ draws ire*, GUARDIAN, (Nov. 23, 2011, 4:49 PM), <http://www.guardian.co.uk/world/blog/2011/nov/23/occupy-wall-street-peoples-library>. Significant destruction of personal property was also reported during evictions in other cities. For example, in New Orleans, police moved in at daybreak on December 5, 2011 to evict Occupy NOLA. Countless items of personal property that belonged to Occupy NOLA demonstrators were destroyed, including medicines and tents. Information provided by Davida Finger, lawyer for Occupy NOLA protesters. (On file with Research Team.).

²¹⁸ City of New York & Brookfield Properties, “Notice of Requirement to Remove Property From Zuccotti Park” (Nov. 15, 2011) (copy on file with Research Team). See also Matt Wells, *Occupy Wall Street: police evict protesters—as it happened*, GUARDIAN (Nov. 15, 2011, 11:13 AM, 6:13 AM), <http://www.guardian.co.uk/world/blog/2011/nov/15/occupy-wall-street-zuccotti-eviction-live>.

²¹⁹ Jose Coscarelli & Noreen Malone, *Fate of Zuccotti Park Uncertain as Judge, Bloomberg Disagree [Updated]*, NEW YORK MAG (Nov. 15, 2011, 8:42 AM), <http://nymag.com/daily/intel/2011/11/protesters-can-return-to-zuccotti-park.html> (quoting Public Advocate, Bill de Blasio saying “provocations under cover of darkness only escalate tensions in a situation that calls for mediation and dialogue”).

²²⁰ People’s Reply to Amicus Curiae New York Civil Liberties Union and Defendant’s Reply Affirmation in Further Support of Defendant’s Motion to Dismiss at 7 *People v Nunez*, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (No. 2011NY082981).

²²¹ See e.g., *Major Media Organizations Criticize NYPD’s Mistreatment of Press During Zuccotti Eviction*, NYCLU (Nov. 21, 2011), <http://www.nyclu.org/news/nyclu-major-media-organizations-criticize-nypd%E2%80%99s-mistreatment-of-press-during-zuccotti-eviction>.

were granted—a temporary restraining order from Judge Lucy Billings of the New York Supreme Court, New York’s court of first instance. At 6:30 a.m., Judge Billings issued an order prohibiting Brookfield Properties from “enforcing ‘rules’ published after the occupation began or otherwise preventing protesters from re-entering the park.”²²² The order mandated that the City and Brookfield Properties permit the protesters to return to Zuccotti Park, with their belongings, but compelled the protesters and the City to return to court in the afternoon to debate the merits of an extension of the temporary restraining order.²²³

Despite explicit efforts by protesters to effect this court order, the City and Brookfield Properties refused to comply.²²⁴ In fact, the City initially allowed protesters to return to the park after the park’s cleaning in the early morning, and then reportedly re-evacuated and closed the park subsequent to the court order.²²⁵ In a press conference after the eviction and the initial court order, Mayor Bloomberg suggested that he was unaware of the order’s contents—“We haven’t seen it or been served with it”—and that protesters were ejected a second time so that the City can “clarify the situation” in court.²²⁶

After the Mayor’s press conference, lawyers and protesters marched to Zuccotti Park with copies of the court order but were denied access to the park by Brookfield security and the police.²²⁷ Protesters reported trying to hand the court order to police, with the police refusing to accept it. Several protesters who passed the line of police and made it into the park reportedly were arrested.²²⁸

At the time of the eviction, the NYPD erected metal barricades around the full length and width of the park.²²⁹ The barricades remained for approximately two months, with only

²²² Order to Show Cause and Temporary Restraining Order, *Waller v. City of New York*, 933 N.Y.S.2d 541 (Sup. Ct. 2011, Nov. 15, 2012, 6:30 a.m.) available at <http://lawprofessors.typepad.com/conlaw/2011/11/occupy-wall-street-eviction-and-temporary-restraining-order.html>.

²²³ *Id.*

²²⁴ See e.g., Daniel Strauss, *Bloomberg: Zuccotti Park closed while city reviews court order*, THE HILL (Nov. 15, 2011), <http://thehill.com/blogs/blog-briefing-room/news/193599-bloomberg-zuccotti-park-will-stay-closed-while-city-reviews-court-order>.

²²⁵ Jose Coscarelli & Noreen Malone, *Fate of Zuccotti Park Uncertain as Judge, Bloomberg Disagree [Updated]*, NEW YORK MAG, (Nov. 15, 2011, 8:42 AM), <http://nymag.com/daily/intel/2011/11/protesters-can-return-to-zuccotti-park.html> (“The mayor said that while protesters were initially allowed back in after cleaning — about 50 or so by his count — the city re-evacuated the group once they learned of the court order.”). See also Interview with Michael Tracey (Journalist) (2012) (stating that “there was a brief period of time in the morning when people were let back in the park. Then they closed it again.”).

²²⁶ Jose Coscarelli & Noreen Malone, *Fate of Zuccotti Park Uncertain as Judge, Bloomberg Disagree [Updated]*, NY MAG (Nov. 15, 2011), <http://nymag.com/daily/intel/2011/11/protesters-can-return-to-zuccotti-park.html> (“If the judge changes his mind, it would create a danger to public safety,’ the mayor said.”). See also James Barron & Colin Moynihan, *Police Oust Occupy Wall Street Protesters at Zuccotti Park*, N.Y. TIMES (Nov. 15, 2011), <http://www.nytimes.com/2011/11/16/nyregion/police-begin-clearing-zuccotti-park-of-protesters.html?pagewanted=all>.

²²⁷ Similar disregard for legal process occurred at Occupy NOLA. There, on December 4, 2011, Occupy NOLA protesters filed a lawsuit in federal court and requested a temporary restraining order against the City. See *Enziaya v. Landrieu et al*, (EDLA) (J. Afrik), Case No. 11-02977. However, the next day, and just a few hours before a federal court judge was scheduled for a hearing concerning the temporary restraining order, Mayor Landrieu oversaw the New Orleans Police Department’s eviction of Occupy NOLA. Research credited to the Community Justice section of Loyola Law Clinic (New Orleans).

²²⁸ See e.g., *New York court upholds eviction of Occupy protesters*, CNN (Nov. 15, 2012), http://articles.cnn.com/2011-11-15/us/us_new-york-occupy-eviction_1_protesters-demonstrators-tents?_s=PM:US; Matt Wells & Peter Walker, *Occupy Wall Street: police evict protesters - as it happened*, GUARDIAN (Nov. 15, 2011, 10:51 am), (“Despite the court order apparently allowing protesters back into Zuccotti Park, police are resolutely preventing protesters from retaking the plaza. A clash of some kind seems inevitable, with police in riot gear penning protesters at the north side of the square.”); *Occupy Wall Street: police evict protesters—as it happened*, GUARDIAN (Nov. 15, 2011, 10:34 am) (“Individual protesters are waving the court order in the faces of NYPD officers. A few arrests have begun as scuffles break out.”).

²²⁹ See Letter from Alan H. Levine, et al., to Justice Michael D. Stallman, Supreme Court of New York (Nov. 18, 2011) (re: *Waller v. City of New York*, Index No. 112957/11); Letter from NYCLU, CCR, and NLG-NYC to Commissioner Robert LiMandri, NYC Department of Buildings (Jan. 9, 2012).

limited gaps for protesters or other members of the public to enter or exit the park, with uniformed police and/or Brookfield private security stationed at these entry points.

Challenge to the eviction. Mayor Bloomberg stated that the decision to evict was “mine and mine alone.”²³⁰ The City asserted that in evicting the protesters, it was acting at the initial request of Brookfield,²³¹ yet that it would have been justified in evicting on its own.²³² The City justified the eviction on various health and safety grounds, including the risk of fire,²³³ violence and increased crime,²³⁴ and “unhygienic” conditions.²³⁵ The City also asserted that the use of the park by protesters was denying other members of the public access for “passive recreation.”²³⁶

The lawyers for the protesters asserted, on the other hand, that the City and Brookfield had exceeded their rule-making authority given the First Amendment protections due the protesters. They asserted that the park qualified as a traditional public forum for a First Amendment analysis, and that in the context of the Occupy Wall Street protests, sleeping qualifies as expressive conduct: “The power of this symbolic speech resides in the fact that it is a 24-hour occupation.”²³⁷ The protesters asserted that the rules established—and manner in which they were enforced—did not satisfy the requirements that the State demonstrate a compelling public interest and restrict First Amendment activities in the least drastic manner possible.

Judge Michael Stallman, the second judge assigned to the case, refused to grant an extension of the first temporary restraining order. He acknowledged that:

Occupy Wall Street brought attention to the increasing disparity of wealth and power in the United States, largely because of the unorthodox tactic of occupying the subject public space on a 24-hour basis, and constructing an encampment there.

Yet he nonetheless held that the protesters “have not demonstrated that they have a First Amendment right to remain in Zuccotti Park, along with their tents, structures, generators

²³⁰ Garth Johnson, *Bloomberg: OWS Eviction Decision Was “Mine and Mine Alone,”* GOTHAMIST (Nov. 15, 2011, 9:02 am), http://gothamist.com/2011/11/15/bloomberg_ows_eviction_decision_was.php.

²³¹ Letter from Ric Clark, CEO of Brookfield Properties, to Michael Bloomberg, Mayor of New York City (Nov. 14, 2011), available at <http://observer.com/2011/11/occupy-wall-street-diaspora-day-1pm-update-the-court-order-battle-rages-on-reporters-arrested-marches-close-in-on-zuccotti/>. (On November 14, Brookfield CEO Ric Clark had sent a private letter to Mayor Bloomberg requesting public assistance to clear the park, asserting that Zuccotti Park was “never intended to be a tent city nor to be used in a way that puts the health and well-being of its occupants and the local community at risk,” and that park conditions had “deteriorated to the point where safety is an urgent issue.”).

²³² People’s Reply to Amicus Curiae New York Civil Liberties Union and Defendant’s Reply Affirmation in Further Support of Defendant’s Motion to Dismiss at 17, 27 *People v. Nunez*, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (Mar. 23, 2012) (No. 2011NY082981).

²³³ *New York court upholds eviction of Occupy protesters*, CNN (Nov. 15, 2012), http://articles.cnn.com/2011-11-15/us/us_new-york-occupy-eviction_1_protesters-demonstrators-tents?s=PM:US (Mayor Bloomberg: “We have an obligation to enforce the laws today, to make sure that everybody has access to the park so everybody can protest. . . . We also have a similar, just as important obligation to protect the health and safety of the people in the park.”); People’s Reply to Amicus Curiae New York Civil Liberties Union and Defendant’s Reply Affirmation in Further Support of Defendant’s Motion to Dismiss at 17 *People v. Nunez*, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (No. 2011NY082981).

²³⁴ People’s Reply to Amicus Curiae New York Civil Liberties Union and Defendant’s Reply Affirmation in Further Support of Defendant’s Motion to Dismiss at 5-6, *People v. Nunez*, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (No. 2011NY082981).

²³⁵ *Id.*

²³⁶ *City of New York Amicus Curiae* at 8, *People v. Nunez*, 943 N.Y.S.2d 857, 2012 NY Slip Op 22089 (N.Y. City Crim. Ct. 2012) (No. 2011NY082981) (Mar. 22, 2012).

²³⁷ Transcript of Hearing Seeking Temporary Restraining Order at 35-36, *Waller v. City of New York*, 933 N.Y.S.2d 541 (Sup. Ct. 2011, Nov. 15, 2012, 6:30 AM) (No. 112957/11).

and other installations.”²³⁸ Judge Stallman upheld the rules as “reasonable” for the maintenance of the plaza in a “hygienic, safe and lawful condition.”²³⁹ Only after this second judicial decision did the City permit re-entry into Zuccotti Park.²⁴⁰ The protesters did not pursue the case further for an injunction against the City.²⁴¹

Zuccotti Park eviction likely violates international law. On the available facts, the eviction appears to fail the test for legitimate state restrictions on freedom of assembly and expression required under international law. The City’s actions to forcibly evacuate the protesters from privately owned public space in the middle of the night constitutes a state restriction on expression and assembly rights, satisfying the threshold question.²⁴² The protest encampment constitutes a *prima facie* protected assembly, despite its extended nature.

The private ownership of a park—for example, the hundreds of privately owned public spaces, or POPS, in New York City—does not per se disqualify it from freedom of expression and assembly protections. U.S. law is instructive on this point given the decades-long use by city planners of POPS as a means of ensuring open space for public use. Courts have recognized that property that is dedicated to public use is no longer truly private.²⁴³ Indeed, the New York judge overseeing the criminal cases of Occupy Wall Street protesters charged in connection with the eviction, assumed without deciding that First Amendment protections applied to Zuccotti Park.²⁴⁴

The City’s purported justifications for the eviction—health and safety concerns, and the rights of others—are legitimate aims under international law for imposing restrictions on

²³⁸ Order Denying Temporary Restraining Order, *Waller v. City of New York*, 933 N.Y.S.2d 541, 543 (N.Y. Sup. Ct. Nov. 15, 2011), available at http://www.uslaw.com/occupywallstreet/tro_decision.

²³⁹ *Id.*

²⁴⁰ Matt Wells, *Occupy Wall Street: police evict protesters—as it happened*, GUARDIAN (Nov. 15, 2011, 5:34 pm), <http://www.guardian.co.uk/world/blog/2011/nov/15/occupy-wall-street-zuccotti-eviction-live> (“Police have announced that protesters will be allowed back into the plaza, subject to bag searches.”).

²⁴¹ Colin Moynihan, *Occupy Wall Street Drops Suit on Zuccotti Park*, N.Y. TIMES (Jan. 24, 2012, 4:13 pm), <http://cityroom.blogs.nytimes.com/2012/01/24/occupy-wall-street-drops-suit-on-zuccotti-park/>.

²⁴² The private ownership of the space does not eliminate the government’s responsibility to ensure that freedom of speech and assembly rights are protected within the space. The space is designated by a special permit to be for public use; and coercive state action was used to effect the ejection and the enforcement of rules established by the private owner, which the private owner justifies in part because of its obligations to the city pursuant to the permit.

²⁴³ *Venetian Casino Resort v. Local Joint Exec. Bd. of Las Vegas*, 257 F.3d 937, 941 (9th Cir. 2001) (permitting labor unions to picket on a privately owned pedestrian sidewalk and holding that the sidewalk was a public forum subject to the First Amendment because it was serving a public function, citing as rationale the facts that the sidewalk was indistinguishable from the publicly owned property to which it was connected, and served as a crucial pedestrian segment on the Las Vegas Strip). The most significant factors considered by courts in determining whether First Amendment protections apply are the actual use and purposes of the property, such as whether the POPS is used primarily as a thoroughfare or as an entranceway to a privately owned building; and the “area’s physical characteristics,” particularly whether the space has certain physical barriers to entry and how easily distinguished its design is from publicly owned spaces in close proximity. See generally *Dolan v. City of Tigard*, 512 U.S. 374, 393 (1994) (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979)). *ACLU of Nev. v. City of Las Vegas*, 333 F.3d 1092, 1099-1100 (9th Cir. 2003) (holding that a publicly owned but privately operated pedestrian mall was a traditional public forum subject to the First Amendment, and stating: “No clear-cut test has emerged for determining when a traditional public forum exists. In the absence of any widespread agreement upon how to determine the nature of a forum, courts consider a jumble of overlapping factors, frequently deeming a factor dispositive or ignoring it without reasoned explanation.”). But see *Utah Gospel Mission v. Salt Lake City Corp.*, 425 F.3d 1249 (10th Cir. 2005) (holding that the pedestrian plaza of the LDS Church was a nonpublic forum for First Amendment purposes, where a public easement had been sold to the LDS Church, the plaza was physically distinguishable from publicly owned property); *Hotel Emples. & Rest. Emples. Union, Local 100 v. City of N.Y. Dep’t of Parks & Rec.*, 311 F.3d 534, 551-52 (2d Cir. 2002) (holding that New York City’s Lincoln Center was not a public forum, because it served as a “pleasing forecourt” for patrons of the Lincoln Center arts complex). Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark.

²⁴⁴ *People v. Nunez*, 2012 NY Slip Op 22089 (N.Y. Cty. Crim. Ct. 2012) (Dkt. No. 2011 NY 082981) (Apr. 6, 2012). The judge nonetheless held that the eviction, and related arrests, were legitimate police actions.

freedom of expression and assembly rights. However, the city's assertion that the protest was an undue imposition on the rights of other members of the public to access the park is questionable given that the park appears to have been more heavily used by a broad swath of the public during the encampment than at any other time in its history, and that protesters made well-publicized efforts to respond to the concerns of nearby residents.²⁴⁵ Similarly, the city's assertions that public health, fire, and safety concerns justified the fact of the eviction are questionable in light of the movement's efforts, described above, to respond to fire hazards and perceived unsanitary conditions, and to reach out to the City and Brookfield to discuss and respond to any other identified concerns.

More important here, however, is the test of whether the City's decision to evict the protest meets the "necessary and proportionate" test. Measures to restrict assembly and expression rights must be the "least restrictive" to meet a legitimate aim.²⁴⁶ The eviction was neither a necessary nor proportionate restriction in response to what may have been valid concerns. There were other reasonable measures that could have been taken short of a midnight raid. The City could have sent its representatives to any Occupy General Assembly to explain its concerns, and sought to assist protesters to address them.²⁴⁷ Or, the City could have specified its concerns in writing and distributed them at Zuccotti Park. Additionally, as argued by lawyers for the protesters at the hearing scheduled immediately after the protest:

[T]hose [Brookfield] rules have been pasted up for over six weeks. And nobody has tried to enforce them. There was no particular emergency this morning. There was no particular activity that was going on that created a public nuisance this morning that required the police to come in en masse at 1 o'clock in the morning.²⁴⁸

The City's actions do not appear to withstand scrutiny under international law. Available facts—including those related to the widespread use of force, property destruction, and the curtailment of media freedom and independent observation during the eviction—also raise concerns about city authorities' respect for the rights of protesters and others during the eviction, even if the eviction were justified.²⁴⁹

2. Shifting and Arbitrary Park Rules

Subsequent to the City's closure of the park on November 15, the City nominally reopened the park, but with constrained public access. Since then, the City and Brookfield have acted repeatedly to strictly enforce park rules, including "rules" that do not exist.

Under international law, restrictions on freedom of expression must be legal, based on a law sufficiently precise to enable someone to regulate their actions to determine the likely

²⁴⁵ See, e.g., Bob Hennelly, *Occupying Wall Street and Trying to Be a Good Neighbor*, WNYC NEWS BLOG (Oct. 11, 2011, 7:47 PM), <http://www.wnyc.org/blogs/wnyc-news-blog/2011/oct/11/occupying-wall-street-and-trying-be-good-neighbor/>; Matt Sledge, *Occupy Wall Street Gets a Vote of Approval, and a Warning, from Community Board 1*, HUFFINGTON POST (Oct. 26, 2011, 1:05 PM), http://www.huffingtonpost.com/2011/10/26/occupy-wall-street-community-board_n_1031892.html.

²⁴⁶ See Part I, Chapter Three, "International Law and Protest Rights."

²⁴⁷ The City appeared confused about how to interact with a horizontal movement that professed that it had no representatives or leaders. However, it was common knowledge that the Occupy General Assembly was the movement's primary decision making body, and where many protesters gathered to discuss important issues. One journalist noted that in the first month of Occupy Wall Street, he witnessed an officer come into the park, asking to speak with a representative. Protesters told the officer that he could come to a General Assembly and speak with everyone there: Interview with J.A. Myerson (Journalist) (2012).

²⁴⁸ Transcript of Hearing Seeking Temporary Restraining Order at 24, *Waller v. City of New York*, 933 N.Y.S.2d 541 (Sup. Ct. 2011, Nov. 15, 2012, 6:30 a.m.) (No. 112957/11).

²⁴⁹ See Part I, Chapter Three, "International Law and Protest Rights."

consequences, and not subject to unduly broad police discretionary powers.²⁵⁰ The “rules” applied to protesters, journalists, and bystanders in and around Zuccotti Park, particularly after the eviction epitomize undue discretion and arbitrary rule enforcement.

On most occasions when there were Occupy-affiliated protesters in the park, uniformed police and Brookfield guards patrolled the area and purported to enforce park rules sometimes through threat of arrest or actual arrest by the NYPD. Yet the rules governing entry to the park, or permission to remain in the park, have been erratically and inconsistently enforced. And new rules are established seemingly at whim.²⁵¹ Civil rights lawyers from the New York Civil Liberties Union (NYCLU), the Center for Constitutional Rights (CCR), and the National Lawyers Guild–New York City Chapter (NLG-NYC) described the variable prohibitions in a letter of complaint to the City on January 9, 2012:

The unwritten list of prohibited items varies daily and is wildly inconsistent. Individuals have been refused entry for possessing food, musical instruments, yoga mats, cardboard signs, shawls, blankets, “prohibited containers,” chairs, bags of varying sizes, and numerous other personal items. Almost all the items that have been prohibited in Liberty Plaza—signs, bags, containers, food, musical instruments, etc.—have also been allowed to enter the park at other times. Who is searched and what is prohibited is arbitrary and inconsistent. It varies by the day, the type of activity in the park at the time, the attire of the person attempting to enter, and the caprice of security personnel.²⁵²

There are endless iterations of purported “rule” applications. On November 15, for example, immediately after the police allowed protesters to re-enter the park after the eviction and the dueling judicial decisions, the police denied entry to “[t]hose carrying backpacks and large amounts of food,” and required people to line up single file to enter the park through small gaps in the barricades.²⁵³ Immediately after the reopening of the park, protesters described NYPD “warrantless and unreasonable searches of people and property,” the City’s prohibition of protesters lying down—including instances in which police have woken people “sleeping while sitting up,” and the denial of entry to people with musical instruments or books, among other materials, and the seizure of these materials in some instances.²⁵⁴ In numerous instances, protesters described police or security preventing entry into the park on account of a refusal to permit a bag search, or refusing to permit certain belongings into the park.

On November 24, 2011, police and Brookfield’s private security allowed protesters to serve and share food for Thanksgiving, but then threatened to arrest an individual with a drum, asserting that a drum was a “container,” and thus prohibited.²⁵⁵ On another occasion, one officer prohibited approximately five protesters from sharing food; another officer intervened and allowed them to eat in the park.²⁵⁶ In another set of incidents, protesters sought to hold a series of “Think Tanks” in the park. These were semi-structured conversations about a

²⁵⁰ See Part I, Chapter Three, “International Law and Protest Rights.”

²⁵¹ See e.g., Letter from NYCLU, CCR, and NLG-NYC to Commissioner Robert LiMandri, NYC Department of Buildings (Jan. 9, 2012). (“members of the public are subject to *ad hoc*, arbitrary and inconsistent rules and conditions restricting their use of the park”).

²⁵² *Id.*

²⁵³ James Barron & Colin Moynihan, *Police Oust Occupy Wall Street Protesters at Zuccotti Park*, N.Y. TIMES (Nov. 15, 2011), <http://www.nytimes.com/2011/11/16/nyregion/police-begin-clearing-zuccotti-park-of-protesters.html?pagewanted=all>.

²⁵⁴ Letter from Alan H. Levine, et al., to Justice Michael D. Stallman, Supreme Court of New York (Nov. 18, 2011) (re: *Waller v. City of New York*, Index No. 112957/11).

²⁵⁵ Witnessed by member of Research Team.

²⁵⁶ Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

range of issues, open to anyone to join. After the eviction, and because many protesters and most bystanders did not want to enter a park surrounded by barricades, protesters held the Think Tanks in the corners of the park, near sidewalks, so that more people could listen and join in. However, interviewees stated that police prevented individuals from standing on the sidewalks, and then cordoned off those areas of the park where the Think Tanks took place. The participants were thus forced to host the meetings in the center of the park, which, combined with the regular harassment, notably minimized public participation.²⁵⁷

On January 11, the day the City removed the barricades surrounding the park, Brookfield security entered the park to enforce the rules prohibiting lying down in the park, and informed protesters “that books were not permitted inside the park” and “that drumming was not allowed.”²⁵⁸ On the same night, the police arrested at least two protesters for laying down inside the park and “guards and a police commander ripped pieces of cardboard from the grasp of protesters,” asserting that it was prohibited “padding.”²⁵⁹

As recently as July 11, 2012, police and Brookfield continued to arbitrarily and selectively enforce “prohibitions” on backpacks, sharing food, lying down, and bringing chairs into the park.²⁶⁰ At one point, police and Brookfield prevented a small group of protesters from sharing pasta, but shortly thereafter, they allowed protesters to distribute a large number of pizzas.²⁶¹ Police told protesters “at various points that backpacks were not permitted in the park and that people could not distribute food there.”²⁶² In enforcing the “no backpack” rule, Brookfield and police especially targeted anyone visibly and vocally protesting the security response, but let other protesters remain with backpacks.²⁶³ At one point, and in one of the more unnecessary shows of force documented in this report, at least 40 officers were deployed to force a 56-year-old woman out of the park because she was sitting in a folding chair, apparently against the rules.²⁶⁴ The woman was grabbed by an officer “[a]s she was getting up and gathering her things” and was led out of the park.²⁶⁵ A protester attempting to assist her remove her things was then violently arrested, and an individual videotaping the incident was also arrested.²⁶⁶

On **July 17**, Brookfield guards again engaged in arbitrary and abusive action. On this date, apparently upset at being filmed, a guard grabbed a videographer’s iPad and threw it to the ground. When the videographer bent down to pick it up, the guard kicked it further away.²⁶⁷

²⁵⁷ Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

²⁵⁸ Colin Moynihan, *Barricades Come Down at Zuccotti Park*, N.Y. TIMES, (Jan. 11, 2012, 9:20AM), <http://cityroom.blogs.nytimes.com/2012/01/11/barricades-come-down-at-zuccotti-park/>.

²⁵⁹ Id.

²⁶⁰ Witnessed by members of Research Team.

²⁶¹ Witnessed by members of Research Team.

²⁶² Colin Moynihan, *At Least 3 Arrested at Zuccotti Park After Occupy March*, N.Y. Times (July 12, 2012, 11:14 AM), <http://cityroom.blogs.nytimes.com/2012/07/12/at-least-3-arrested-at-zuccotti-park-after-occupy-march/>.

²⁶³ Witnessed by member of Research Team.

²⁶⁴ Witnessed by member of Research Team. See also Colin Moynihan, *At Least 3 Arrested at Zuccotti Park After Occupy March*, N.Y. TIMES (July 12, 2012, 11:14 AM), <http://cityroom.blogs.nytimes.com/2012/07/12/at-least-3-arrested-at-zuccotti-park-after-occupy-march/>; frozac, *JRozLive*, USTREAM (July 11, 2012), <http://www.ustream.tv/channel/jrozlive> (at 4:36, showing an officer standing a few feet away from the woman, telling her through a megaphone that if she did not leave the park, she would be arrested for trespassing); HelloKnitty, *Shall we Dance?, Living in a Knitters Paradise* (Jul. 12, 2012, 2:15 PM), <http://helloknittymi.blogspot.com/2012/07/shall-we-dance.html?spref=tw> (blog by the woman forced out of the park, describing the incident, and her fear at the way the police treated her).

²⁶⁵ Colin Moynihan, *At Least 3 Arrested at Zuccotti Park After Occupy March*, N.Y. TIMES (July 12, 2012, 11:14 AM), <http://cityroom.blogs.nytimes.com/2012/07/12/at-least-3-arrested-at-zuccotti-park-after-occupy-march/>.

²⁶⁶ Id.

²⁶⁷ itsbatmansilly, *Recal Assaulted View 2*, YOUTUBE (July 17, 2012),

<http://www.youtube.com/watch?v=MgclmUzorWU> (showing the security guard grabbing the iPad, throwing it to the ground, and kicking it at 0:30); Christopher Robbins, Video: *Bored Zuccotti Park Security Guard Smashes Occupy*

3. Subsequent Park Closures

On at least two occasions subsequent to the November 15 eviction, including on January 1 and March 17, the City shut down Zuccotti Park without advance warning, a process, or any demonstration that the closure was necessary, proportionate, pursuant to a legitimate aim, or subject to any sufficiently precise lawful restriction.

On January 1, 2012, police entered the park and evacuated it at 1:30 a.m.²⁶⁸ Earlier in the evening, police and Brookfield guards had prohibited people from entering the park, including at least one journalist, pending the removal of one “small multicolored tent” that had been erected and which two young girls were playing inside. Protesters dismantled the tent.²⁶⁹ Later, protesters removed some of the barricades surrounding the park, resulting in a scuffle and some arrests. At about 1:30 a.m., the police and private security entered the park to evict the remaining approximately 150 people—announcing the park’s closure until the next morning. Soon after protesters exited the park, the police forced them off the surrounding streets, announcing their closure as well.²⁷⁰

On March 17, 2012, as described above, during a protest to mark the six-month anniversary of the OWS protests, police again cleared protesters from the park, in the process making 70 arrests (a significant number of those arrested were later released in the middle of the night, without charge).²⁷¹ No facts are known to have existed which might have justified the closure.²⁷² Protesters contested the closure of the park to no avail. Following the forced closure, the police and security again placed a ring of barricades around the park and, as with the New Year’s Eve closure, proceeded to evacuate people from surrounding streets by force, arrest, and the threat of arrest.²⁷³

For the reasons explained above in relation to the eviction, these park closures also likely violate international law. As the numbers of protesters are smaller than were present

Livestreamer's Camera, GOTHAMIST (July 18, 2012, 10:24 AM), http://gothamist.com/2012/07/18/video_brookfield_security_guard_cau.php.

²⁶⁸ Colin Moynihan & Elizabeth Harris, *Surging Back Into Zuccotti Park, Protesters Clash with Police*, N.Y. TIMES (Jan. 1, 2012, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/>. Barry Paddock & Larry McShane, *Protesters Occupy New Year in Zuccotti Park*, N.Y. DAILY NEWS (Jan. 1, 2012), <http://www.nydailynews.com/news/yup-back-protesters-occupy-new-year-article-1.999412> (“The return of the 99% came about 90 minutes before midnight, with the demonstrators taking down the dozens of steel barricades set up around the park since their Nov. 15 eviction. Police arrived, set up a new line of barricades ringing the park and shut down some of the surrounding lower Manhattan streets.”).

²⁶⁹ Colin Moynihan & Elizabeth Harris, *Surging Back Into Zuccotti Park, Protesters Clash with Police*, N.Y. TIMES (Jan. 1, 2012, 9:58 PM), <http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/>.
²⁷⁰ Id. (“A line of officers pushed protesters from the park and led about five people out in handcuffs. One officer used two hands to repeatedly shove backwards a credentialed news photographer who was preparing to document an arrest. A police commander announced through a megaphone that the park, which is normally open 24 hours a day, was closed until 9 a.m., but did not provide a reason. A few moments later, officers told the crowd that had just been moved from the park that the sidewalks surrounding Zuccotti Park were also closed, and directed people across Broadway.”).

²⁷¹ Colin Moynihan, *Scores Arrested as the Police Clear Zuccotti Park*, N.Y. TIMES (Mar. 17, 2012, 8:00 PM), <http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/> (“Scores of Occupy Wall Street protesters were arrested on Saturday night as police officers swept Zuccotti Park in Lower Manhattan and closed it. . . . The operation occurred after hundreds of people had gathered in the financial district to observe the founding of Occupy Wall Street six months ago. By 11:30 p.m., as police officers massed on Broadway, a commander announced that the park was closed. Those inside shouted back that the park was obliged through an agreement with the city to remain open. The commander then announced that anyone who remained inside would be arrested and charged with trespassing.”). See also Interview with Meg Maurus (Lawyer) (2012) (noting that at least 13 protesters were released in the middle of the night).

²⁷² See Part II, Chapter 1, Section 1, “Bodily force: pushing, shoving, dragging, hitting, punching, kicking.”

²⁷³ A significant number of allegations of unnecessary and excessive force were made about this closure. These are discussed above.

during the encampment in November, and their belongings more limited, any legitimate health or safety justification for the closures appears extremely attenuated in these circumstances, and alternative less drastic measures more available. The apparently discretionary actions of the police, without clearly stated justification or based on any evident rule, further violates the requirement that any legitimate restriction on freedom of expression be pursuant to a sufficiently precise law. The restrictions appear wholly disproportionate.²⁷⁴

Chapter Seven: Public Space Closure—Strategies of Containment, Exclusion, and Dispersal

In addition to the issues surrounding Zuccotti Park describe above, law enforcement officers in New York City have employed a variety of other spatial tactics to control and restrict the movement of Occupy protests. Tactics have taken the form of both *containment* (including through kettling) and *exclusion/dispersal* (through sidewalk and park closure, the creation of “frozen zones,” and assembly dispersal based on alleged pedestrian and vehicle traffic obstruction).

International law protects the rights of protesters to assemble, march, or demonstrate in public spaces, including public parks, squares, and sidewalks.²⁷⁵

The NYPD generally does not stop protesters from marching on NYC’s sidewalks or from assembling within parks during opening hours. However, undue interference with protest rights through the use of containment and exclusion tactics has been a persistent but unpredictable feature of NYPD protest policing. Such tactics were reported repeatedly and across the entire period of review.²⁷⁶ This section documents the reported incidents, trends, and effects of the NYPD’s use of these tactics.

1. Kettling (Corralling)

During the first four months of Occupy Wall Street, the NYPD used orange netting, scooters, and rows of officers to kettle protesters on repeated occasions.

The kettling incidents involved police suddenly fully surrounding protesters and bystanders, cutting off all paths of ingress/egress without warning, and refusing to let anyone enter or exit the contained public sidewalk, street, or city block.²⁷⁷ Kettling varied in duration from relatively fleeting movement restriction of a few minutes to extended containment for numerous hours. Some kettling resulted in mass arrests²⁷⁸; other incidents ended in protesters being released after their repeated requests, without any charges or arrests.²⁷⁹

²⁷⁴ See Part I, Chapter Three, “International Law and Protest Rights.”

²⁷⁵ See *id.*

²⁷⁶ This includes on September 24, October 1, October 15, November 5, November 15, November 20, November 30, December 17, January 1, January 6, March 7, March 17, March 24, April 20, May 22, May 30, June 13, and June 17. Incidents are described below.

²⁷⁷ This report excludes from “kettling” incidents those circumstances in which police *partially* contain or block protests, but create an exit/entry path for protesters. Such cases are discussed below.

²⁷⁸ The Brooklyn Bridge arrests, one of the most well-known Occupy events, was a case of kettling and mass arrest. The mass arrest is now the subject of a civil suit: see *Garcia v. Bloomberg*, No. 11 Civ. 6957 (JSR), 2012 WL 2045756, at *3 (S.D.N.Y. June 7, 2012) (in which plaintiffs alleged that the NYPD led protesters to believe that they were permitted to march on the roadway of the Brooklyn Bridge, where they were subsequently kettled and arrested; the judge denied defendants’ motion to dismiss claims against the arresting officers on grounds that the majority of the protesters did not receive fair warning before being arrested and that a reasonable officer would have known that their efforts to warn protesters to stay off the roadway were inadequate, but dismissed plaintiffs’ claims against the City, the Mayor and the Police Commissioner). Mass arrests were also effected through kettling on

On January 1, for example, police used a mix of these kettling tactics. During an Occupy march, police first kettled protesters by blocking both ends of a city block, and temporarily preventing any protesters or bystanders from exiting or entering under threat of arrest or use of force. When a member of the Research Team asked police at each end of the block whether individuals could leave and why they were being detained, officers provided no reason and told the group to exit at the other (also blocked) end.²⁸⁰ Shortly after, the sidewalk was reopened, and police permitted the march to continue. However, officers on foot and on scooters then without warning suddenly surrounded the front section of the group of protesters marching on the sidewalk.²⁸¹ While one senior officer within the kettled area told some members of the group to disperse, the officers encircling the group refused many protester and legal observer requests and attempts to do so.²⁸² One witness saw an individual ask officers how they could leave, and an officer pointed out a direction in which to walk. When the individual moved that way, he was arrested.²⁸³ Many of the other individuals trapped in the kettle were arrested, although most of the charges were subsequently dropped.

In another kettling case, police on November 30 detained some 100 individuals peacefully protesting near a fundraising event at which President Obama was speaking. Police kettled protesters, bystanders, and journalists on a sidewalk and refused to let them leave for approximately two hours. None of the individuals were arrested or charged, and the incident

September 24. See e.g., John Farley, *Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take*, SALON (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ (“I saw police use large nets to corral people en masse”); RSH0tt, *Police Kettle Us Right Before Arrest Sep 24*, YOUTUBE (Sept. 25, 2011), <http://www.youtube.com/watch?v=iCdsE-qaXd8>; Colin Moynihan, *80 Arrested as Financial District Protest Moves North*, N.Y. TIMES (Sept. 24, 2011), <http://cityroom.blogs.nytimes.com/2011/09/24/80-arrested-as-financial-district-protest-moves-north/?ref=occupywallstreet>.

²⁷⁹ Numerous kettling incidents were reported or observed after the eviction of Occupy Wall Street on November 15. See e.g., Interview with protester (OOO33) (2012) (described being trapped in a kettle of approximately 25 people on Broadway, between Cedar and Pine, for about six hours, enclosed by officers and barricades). Further, relatively temporary kettles occurred on marches following the eviction (witnessed by member of Research Team). At one point, officers on foot fully surrounded a small group of marchers walking on the sidewalk. Legal observers (one of whom was a member of the Research Team) trapped with the group attempted to ask every officer whether they could leave, or whether they were being detained. None answered. Eventually, the legal observers mic-checked so that all officers could hear at once: “Are we being detained? If not, you are required by law to let us go,” and officers then let the group go. See e.g., Interview with legal observer (ZZZ11) (2012) (describing kettles occurring without warning).

²⁸⁰ A similar kind of kettling occurred on December 17. See e.g., Interview with independent journalist (AAA88) (2012); Interview with independent journalist and teacher (SSS88) (2012); occupy17, *OWS d17 Reverend March Part 10 of 10, NYPD Protester Kettle 12/17/11 Occupy Wall Street*, YOUTUBE (Dec. 18, 2011), <http://www.youtube.com/watch?v=MvJkkHMsXAs> (showing police blocking protesters’ path forward on the sidewalk; the cameraman states that “both sides [of the street] are completely blocked off by the police right now”); carlosmandelbaum, *Occupy Wall Street #D17 / Police Violate Constitution and Lose / 12/17/11*, YOUTUBE (Dec. 18, 2011), <http://www.youtube.com/watch?v=isiJpkBvmYk&feature=related> (showing video of the same protest from a different angle in which the police use orange nets to hold back protesters).

²⁸¹ See e.g., Interview with livestreamer (497AB) (2012); see also Compl. at ¶¶ 396-400, *N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski*, 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389) (Civil suit for false arrest, violation of constitutional rights, including violation of the right to free assembly in a public space, and conspiracy to violate first amendment rights during an incident on 100 William St. where Deputy Inspector Winski prevented OWS protesters from entering a public space); Kingdvd74, *NYPD Entrapment of OWS Marchers New Years Eve*, YOUTUBE (Jan. 2, 2012), <http://www.youtube.com/watch?v=R2gWh5Tmwgs&feature=related> (showing protesters kettled with police scooters).

²⁸² A member of the Research Team repeatedly asked officers if she could exit; none permitted her to do so. One officer then began to handcuff her; moments later, another officer released her without charge. (Video on file with Research Team).

²⁸³ Interview with livestreamer (497AB) (2012).

is now the subject of a civil lawsuit.²⁸⁴ Similar kettling practices have also been reported in other large cities, including Oakland²⁸⁵ and Philadelphia.²⁸⁶

A reduction in NYC kettling practices? There were no observed or reported kettling cases after January 1, 2012, until June 4, 2012,²⁸⁷ although many cases of “sidewalk closure,” described below, continued to be reported. The reasons for the minimal use of the tactic are unclear, although the complicated logistics of mass arrests, negative press around kettling, generally smaller protest size, the large numbers of criminal charge dismissals of kettled protesters,²⁸⁸ and subsequent false arrest and imprisonment civil suits may have played a role.²⁸⁹

Impact of kettling. Kettling practices in New York City have inflamed tensions, escalated police-protester conflict, caused confusion and panic among protesters and bystanders, dissuaded individuals from continuing to exercise their assembly and expression rights, and chilled ongoing and future protest activity. For some protesters, just the appearance of police orange netting (associated with kettling practices) has an immediate chilling impact, causing them to decide to quickly leave the protest and go home.²⁹⁰ Members of the Research Team observed that even very brief kettling incidents not resulting in mass arrests have the effect of immediately reducing protest duration and size—many individuals who had been trapped inside or who witnessed the containment are chilled from continuing to participate in a

²⁸⁴ Approximately 100 protesters were kettled on a sidewalk behind barricades for about 2 hours (approx. 8.40pm–10.30pm), while protesting at an Obama fundraiser. None of them were charged or arrested. The incident is now the subject of a civil rights class action suit, Complaint, *Berg v. New York City Police Comm’r*, No. 1:2CV03391, 2008 WL 8801852 (S.D.N.Y. Mar. 28, 2008), available at <http://www.scribd.com/doc/91820907/Berg-v-Nypd-Complaint-Filed>. For press coverage and video of the kettle, see Josh Harkinson, *They’re Holding Us Hostage*, MOTHER JONES (Dec. 1, 2011), <http://motherjones.com/mojo/2011/11/occupy-wall-street-free-speech-zones-obama-protest-video>; See also Interview with community member who frequently attends OWS events (GGG22) (2012) (describing being trapped in the kettle); Interview with protester (III99) (2012) (describing the kettle).

²⁸⁵ Gavin Aronsen, *Journalists—Myself Included—Swept Up in Mass Arrest at Occupy Oakland*, MOTHER JONES (Jan. 29, 2012, 11:03 AM), <http://www.motherjones.com/mojo/2012/01/journalists-arrested-occupy-oakland> (journalist with press pass reports on Oakland kettle in which he was also arrested); Matthew Artz, *Occupiers file claim over YMCA mass arrest*, OAKLAND TRIBUNE (Jun. 29, 2012, 7:01 PM), http://www.insidebayarea.com/news/ci_20976635/occupiers-file-claim-over-ymca-mass-arrests (18 occupiers bring claim for being unlawfully arrested during the January kettle); Akenower, J28 - police kettle Occupy Oakland march at 19th and Telegraph, YOUTUBE (Jan. 30, 2012), <http://www.youtube.com/watch?v=f9sk2r2OjG4>; Pfailblog, *#OPD Kettles Occupy Oakland Protesters Into the YMCA! #J28 #MoveInDay*, YOUTUBE, (Jan. 29, 2012), http://www.youtube.com/watch?v=skhd_fDrwCU (Both videos showing police kettling protesters into a YMCA building).

²⁸⁶ Catherine Brown, *Occupy National Gathering Day 3: Marches, Protests, Arrests*, NBC10 PHILADELPHIA (Jul. 2, 2012, 5:16 PM), <http://www.nbcphiladelphia.com/news/politics/Occupy-National-Gathering-Day-3-Marches-Protests-Arrests-161098085.html> (Philadelphia police report arresting 26 protesters); NativeInterface, *Protesters Kettled And Arrested At Occupy National Gathering #NatGat Part 1/2*, YOUTUBE (Jul. 1, 2012), http://www.youtube.com/watch?v=dOugpD_ivD8&feature=player_embedded#!; NativeInterface, *Protesters Kettled And Arrested At Occupy National Gathering #NatGat Part 2/2*, YOUTUBE (Jul. 1, 2012), <http://www.youtube.com/watch?v=psFIlzcJmXQ&feature=relmfu> (2-part video showing police using bicycles in Philadelphia to kettle protesters); Tweet by National Gathering (@OccupyNG), TWITTER, (Jul. 1, 2012, 12:41 PM), <https://twitter.com/#!/search/kettled> (“30 protesters have been kettled and arrested”).

²⁸⁷ NYCLU reported that approximately 50 protesters near an Obama event were kept in a kettle for about an hour; none were able to leave: NYCLU, *Free Speech Threat Assessment # 4* (May 30, 2012–June 17, 2012), available at www.nyclu.org/protest.

²⁸⁸ Of the 65 people arrested on January 1 for example, at least 39 had their charges dismissed or declined. Many of those whose charges were declined were those arrested in the kettle.

²⁸⁹ See Complaint, *Berg v. New York City Police Comm’r*, No. 1:2CV03391, 2008 WL 8801852 (S.D.N.Y. Mar. 28, 2008); Complaint, *Carpenter v. New York*, No. 11CV08414, 2011 WL 5830606 (S.D.N.Y. Nov. 21, 2011); Garcia v. Bloomberg, No. 11 Civ. 6957 (JSR), 2012 WL 2045756, at *3 (S.D.N.Y. June 7, 2012).

²⁹⁰ Interview with protester (RRR99) (2012) (describing seeing orange netting on September 24, and deciding to go home as soon as the nets were brought out). On June 17, 2012, a member of the Research Team observed the response of a crowd to the appearance of orange netting. While the police did not in fact use the netting to kettle or effect a mass arrest, individuals in the crowd immediately expressed concern, fear, or anger about the possibility of an imminent mass arrest. Some began to warn each other and recommend that individuals who could not risk arrest immediately leave the area; many did so.

march at which police are able to exercise apparently arbitrary power, or for fear that the next kettle will result in arrest. An independent journalist and teacher caught in a December 17 kettle described her surprise and fear at being contained with no way out:

We were asking police how to get out. Some were saying “go up that way” to get out. But then when we went that way, and the other cops wouldn’t let us out that way either. The event was extremely surprising; I was trying to be really careful, and only walking on the sidewalk. It made me feel like you aren’t ever safe.²⁹¹

The witness stated that because of this experience, she subsequently stayed far back from the front of later marches to avoid the risk of being arbitrarily trapped. Similarly, while one activist stated that she takes all possible measures to avoid arrest so that it doesn’t interfere with her job as a clinical psychologist, she feels there is always a “risk”: You “could get rounded up, even if trying to avoid arrest.”²⁹²

Guidelines and law. There are no known public policies or guidelines available about the circumstances in which the NYPD considers kettling a lawful tactic. The lack of guidance or on-site clarity means that, as explained by a legal observer, people “can’t figure out how to act in order to avoid arrest.”²⁹³ A journalist trapped inside one kettle with other journalists and protesters stated that the kettle seemed to serve no purpose except to just be “an effort to break up or slow the march.”²⁹⁴ As detailed above, kettling is rarely lawful under international law, and may only be employed which it is necessary to, for example, prevent imminent injury or breach of the peace.²⁹⁵ In none of the identified cases in which the NYPD used kettling to contain Occupy protesters was there any known reporting that the protests had taken on a violent character, that violence was imminent or considered likely, or otherwise that kettling was the only available protest policing tactic available to police to pursue a legitimate aim.

2. Arbitrary Park Closures

The NYPD has arbitrarily closed parks in New York City to Occupy protesters seeking to peacefully assemble.

Peaceful protest activity in public parks is protected by the international freedoms of assembly and expression. U.S. constitutional law also protects free speech and public assembly in parks and public squares, which are considered quintessential public forums.²⁹⁶ Under U.S. law, a regulation that imposes either on its face or in “its practical operation” a burden “based on the content of speech” or on the “identity of the speaker” does not pass

²⁹¹ Interview with independent journalist and teacher (SSS88) (2012).

²⁹² Interview with protester (MMM55) (2012).

²⁹³ Interview with legal observer (ZZZ11) (2012) (describing the general state of mind amongst the crowd during kettling).

²⁹⁴ Interview with journalist (AAA88) (2012) (describing a kettle in December 17 on 14th or 15th street, lasting for approximately 15 minutes, effected by police blocking both ends of a city block); Interview with protester (KKK77) (2012) (stating that tactics like kettling “thwart” marches by separating protesters from each other).

²⁹⁵ Part I, Chapter Three, “International Law and Protest.”

²⁹⁶ Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark: Under U.S. constitutional law, authorities may impose restrictions on First Amendment activities in public spaces within a permissible scope of regulation. Authorities may impose a reasonable time, place, and manner restriction provided it is (1) content neutral, (2) is “narrowly tailored” to “advance[] a significant government interest” and (3) “leave[s] open ample alternative channels for communication”: *Clark v. Community for Creative Non-Violence*, 468 U.S. 288, at 293.

constitutional muster.²⁹⁷ A regulation that is overly broad and not uniformly applied is unconstitutional.²⁹⁸

The temporary closures of Zuccotti Park on numerous days are discussed above. Other parks around New York City have also been closed. During a peaceful student debt protest on May 22, 2012 — held in solidarity with student protests against tuition hikes in Quebec and to call attention to debt in the United States — police blocked all entrances to Tompkins Square Park and told bystanders, protesters, and legal observers that the police had been ordered to close the park to all for about an hour because of the protest.²⁹⁹ At a subsequent student debt protest³⁰⁰ on June 13, police blocked the entrances to the otherwise open High Line Park and told peaceful protesters they would be arrested if they entered. Tourists and others were permitted to remain in and enter the park.³⁰¹ A Research Team member was present at each incident and observed no protester violence or other lawful basis to close the parks; nor is any public information from the authorities available about any possible lawful justification for the closures.

In addition, park closure times have been strictly enforced—often to the minute, and involving large numbers of officers threatening force and arrest—against Occupy assemblies taking place in the evening.³⁰² On October 15, 2011, for example, members of the Research

²⁹⁷ Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark: *Sorrell v. IMS Health Inc.*, 131 U.S. 2653, 2665 (2011).

²⁹⁸ Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark: The Supreme Court has held, “[i]t is clearly unconstitutional to enable a public official to determine which expressions of view will be permitted and which will not....either by use of a statute providing a system of broad discretionary licensing power or....the equivalent of such a system by selective enforcement of an extremely broad prohibitory statute.” (*Cox v. Louisiana*, 379 U.S. 536, 557-58 (1965).)

²⁹⁹ See also Colin Moynihan, *Tompkins Square Park, Anticipating Protesters, Is Chained Shut*, N.Y. TIMES (May 23, 2012, 11:52 AM), <http://cityroom.blogs.nytimes.com/2012/05/23/sorry-folks-parks-closed-hours-early/> (noting that police did not respond to an inquiry from the reporter about the reasons for the park’s closure); Nick Pinto, *New York Holds Demonstration In Solidarity With Montreal’s Student Strike*, VILLAGE VOICE (MAY 23, 2012), http://blogs.villagevoice.com/runninscared/2012/05/new_york_holds.php; also witnessed by member of Research Team.

³⁰⁰ For a detailed examination of the purpose of the debt marches, see Yates Mckee, *With September 17 anniversary on the horizon, debt emerges as connective thread for OWS*, WAGING NONVIOLENCE (Jul. 13, 2012), <http://wagingnonviolence.org/2012/07/with-september-17-anniversary-on-the-horizon-debt-emerges-as-connective-thread-for-ows/>.

³⁰¹ (Witnessed by member of Research Team). See also Colin Moynihan, *Protesters Arrested in Quebec Solidarity March*, N.Y. TIMES (June 14, 2012, 3:13 PM), <http://cityroom.blogs.nytimes.com/2012/06/14/protesters-arrested-in-quebec-solidarity-march/> (reporting that around 10 p.m. “police officers with scooters blocked the marchers from ascending a flight of stairs to the High Line, saying the park was closed. People who were not participating in the march, however, were permitted onto the High Line, and a parks department employee said Thursday that summer hours were in effect and that the park was open until 11.”); Nick Pinto, *16 Arrested In Student Debt Protest Last Night*, VILLAGE VOICE (June 14, 2012, 8:11 AM), http://blogs.villagevoice.com/runninscared/2012/06/16_arrested_in.php (reporting that “police announced on a bullhorn that the park closed at 10 p.m. and that protesters in the park would be arrested. Confronted by protesters with the park’s website and signage on-site indicating that the park is in fact open until 11 p.m., and informed that the park was still full of people, police were unmoved, blocking access to the High Line steps NYPD Captain Brooks told the *Voice* the park was closed to the protesters “for reasons of public safety.”); Diceytroop, *diceytroop recorded live on 6/13/12 at 10:05*, USTREAM (Jun. 13, 2012, 10:06 PM), <http://www.ustream.tv/recorded/23298898> (showing park closure at 11:55).

³⁰² The police have generally adopted a zero tolerance policy towards Occupy protester presence in parks after closing hours (generally between 11pm-1am). Police presence within parks used by Occupy is typically minimal during opening hours, although often significant at the park’s perimeter and at closing time. Where police know that Occupy Wall Street assemblies are taking place in parks in the evenings, large numbers of officers are assigned to order their removal at the minute the park’s opening hours end. Anyone who remains inside is forcefully removed or arrested. See e.g., Andrew Elrod, *OWS Is Back, and Nightly Union Square Closings Are the New Norm*, NYU LOCAL (Mar. 23, 2012), <http://nyulocal.com/city/2012/03/23/nightly-union-square-closings-the-new-norm/> (reporting that riot police and barricades were closing off Union Square regularly at midnight even a week after May Day); Edgar Sandoval & Janon Fisher, *Cops Oust Protesters from Union Square*, N.Y. DAILY NEWS (Mar. 21, 2012), http://articles.nydailynews.com/2012-03-21/news/31217214_1_protesters-riot-gear-cops (reporting that police closed Union Square after midnight; it is usually open 24 hours).

Team witnessed at least 50 police officers, many in riot gear, converge on Washington Square Park during an Occupy Wall Street General Assembly, and enter the park at midnight en masse to arrest fewer than a dozen peaceful and seated protesters who remained after the park's midnight closing time. Police refused to allow media or legal observers to witness the arrests, even though observers repeatedly attempted to negotiate access.³⁰³

Park closures have been strictly enforced against Occupy assemblies even where they have rarely, if ever, otherwise been enforced against prior users.³⁰⁴ After Occupy protesters began assembling in Union Square in March 2012, the NYPD closed Union Square Park, forcing several hundred out of the park and barricading the southern end of the park—despite the fact that the “curfew has almost never been implemented in Union Square.”³⁰⁵ Indeed, as noted by civil rights lawyer Norman Siegel: “The police tend to enforce these rules [regarding park curfews] selectively, which adds uncertainty and confusion about what rights apply for a peaceful protest.”³⁰⁶

3. Sidewalk Closures and “Blocking Pedestrian Traffic” Arrests

There have been many reports of police arbitrarily creating “frozen zones” or “closed sidewalks” before or during Occupy protests.³⁰⁷ Frozen zones and closed sidewalks are distinct from kettling in that the former tactics are intended to remove or disperse individuals from a specific area, rather than contain them within it. Police appear to typically announce a sidewalk “closed” or “frozen” in order to redirect a march, or to disperse protesters who have gathered on the sidewalk. Many arrests of Occupy protesters have taken place in the context of police seeking to enforce sidewalk closure or protest dispersal; protesters are typically charged with “disorderly conduct.”³⁰⁸

In some cases, sidewalks or streets are pre-emptively “frozen” or closed where the destination of a protest is known in advance.³⁰⁹ The block on which the New York City's mayor lives, for

³⁰³ See also *A Global Day of Action for Occupy Wall Street*, MOTHER JONES (Oct. 15, 2011, 12:05 AM), <http://www.motherjones.com/politics/2011/10/occupy-wall-street-global-day-protest> (journalist account of the incident, and providing video showing the police presence).

³⁰⁴ Natasha Lennard, *NYPD raid burgeoning Union Square occupation*, SALON (Mar 21, 2012, 09:52 AM), http://www.salon.com/2012/03/21/nypd_raid_burgeoning_union_square_occupation/ (Union Square's closing time between 1-6am has been strictly enforced against Occupy assemblies, but rarely enforced otherwise.)

³⁰⁵ John Del Signore, *[UPDATE] NYPD Forces Occupy Wall Street from Union Square, Closing Park for first time since?*, GOTHAMIST (Mar. 21, 2012, 3:00 AM), http://gothamist.com/2012/03/21/nypd_evicts_occupy_wall_street_from.php#photo:1; Barbara Goldberg, *New York Police Eject Occupy Protesters, Arrest Six*, REUTERS (Mar. 21, 2012, 7:20 PM), <http://www.reuters.com/article/2012/03/21/us-occupy-newyork-idUSBRE82K1K920120321>.

See also New York Civil Liberties Union, *Free Speech Threat Assessment # 1* (March 17, 2012-April 10, 2012), available at www.nyclu.org/protest (documenting repeated closures of Union Square when Occupy protesters gathered there); New York Civil Liberties Union, *Free Speech Threat Assessment # 3* (April 29, 2012-May 29, 2012), available at www.nyclu.org/protest (documenting continuing barricading and closure of Union Square).

³⁰⁶ Al Baker & Colin Moynihan, *Occupy Protesters are Arrested at Union Square Park*, N.Y. TIMES (Mar. 21, 2012, 10:16 AM), <http://cityroom.blogs.nytimes.com/2012/03/21/police-and-protesters-clash-at-union-square-park/?ref=occupywallstreet>.

³⁰⁷ Some of the documented frozen zone and closed sidewalk incidents include: September 17, October 1, October 5, October 15, October 18, November 5, November 15, November 20, December 17, January 1, January 6, March 7, March 17-18, March 24, May 1, May 30, June 13, June 17, July 11.

³⁰⁸ See N.Y. PENAL CODE § 240.20 (“A person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof ... (5) He obstructs vehicular or pedestrian traffic; or (6) He congregates with other persons in a public place and refuse to comply with a lawful order of the police to disperse”).

³⁰⁹ See Colin Moynihan, *Wall Street Protest Begins, With Demonstrators Blocked*, N.Y. TIMES (Sept. 17, 2011, 4:26 PM), <http://cityroom.blogs.nytimes.com/2011/09/17/wall-street-protest-begins-with-demonstrators-blocked/?ref=occupywallstreet> (reporting that “the city shut down sections of Wall Street near the New York Stock Exchange and Federal Hall well before [the protesters'] arrival”).

example, has been “frozen” each time protests announced that they would go there (e.g., November 20,³¹⁰ January 6,³¹¹ and June 17³¹²).

Where a sidewalk is “closed” during a protest march or assembly, police typically enforce the closures through verbal commands, threats of arrest, arrests, and in some cases, physical force. Closure announcements by police are generally in the form of a short verbal order that the space is closed, and are often accompanied by an announcement that any person who remains will be arrested. If reasons are provided for the closure, police generally refer to the blocking of pedestrian traffic or the “safety of protesters.” Attempts by protesters to understand the basis for the closure, or obtain clear directions from the police are most often ignored or answered perfunctorily. Sometimes queries are answered with an arrest threat or an arrest.³¹³

There are many examples of purported sidewalk “closure.”³¹⁴ One journalist who frequently covered the protests stated that they are “constant,” and that police seemed to just “close

³¹⁰ Christopher Robbins, *[UPDATE] 24-Hour OWS Drum Circle At Bloomberg's House Begins at 2 P.M.*, GOTHAMIST (November 20, 2011, 10:35 AM), http://gothamist.com/2011/11/20/occupy_wall_streets_24-hour_drum_ci.php; Joseph Goldstein and Colin Moynihan, *Plans of Drum Circle Protest at Bloomberg's Apartment Are Dashed*, N.Y. TIMES, November 20, 2011, <http://www.nytimes.com/2011/11/21/nyregion/plans-of-drum-protest-at-michael-bloombergs-home-are-dashed.html?partner=rss&emc=rss> (In a protest to voice opposition to the city's raid of the Occupy encampment at Zuccotti Park, and the destruction of protester property during the raid, the police “restricted access to all except those who lived on Mr. Bloomberg's block”).

³¹¹ See Christopher Robbins, *NYPD Protects Bloomberg's Townhouse From Protesters, Media*, GOTHAMIST (January 7, 2012, 10:30 AM), http://gothamist.com/2012/01/07/bloomberg_frozen_zone.php#photo-1 (describing the frozen zone and quoting civil rights attorney Norman Siegel: “It's illegal, unconstitutional, and a clear abuse of authority.”).

³¹² John Leland & Colin Moynihan, *Thousands March Silently to Protest Stop-and-Frisk Policies*, N.Y. TIMES (Jun. 17, 2012), <http://www.nytimes.com/2012/06/18/nyregion/thousands-march-silently-to-protest-stop-and-frisk-policies.html?pagewanted=all>. Similarly, on March 7, a frozen zone was used at a protest organized in opposition to the NYPD's surveillance of New York's Muslim communities. See John Bolger, *Ray Kelly Appearance Draws Protesters*, ENVOY (March 7, 2012), <http://hunterenvoy.com/news/ray-kelley-appearance-draws-protesters/> (protesters were told that the sidewalk immediately in front of the building was “frozen,” and that they had to move down the street to a barricaded pen. Following negotiation, they were subsequently permitted to protest across the street from the building).

³¹³ On October 5, for example, a member of the Research Team, acting as a legal observer, asked an officer why a sidewalk was being ordered “closed.” He ordered her arrest and officers grabbed and pulled her away; she was released shortly thereafter without charges.

³¹⁴ On June 17, for example, at the end of a large march against stop and frisk, police announced that the sidewalks on which protesters had gathered were “closed,” and threatened anyone who refused to move with arrest. Groups of protesters were pushed back down various different blocks until the protest had been broken into numerous smaller groups and was eventually fully dispersed. (Witnessed by member of Research Team). See also John Leland & Colin Moynihan, *Thousands March Silently to Protest Stop-and-Frisk Policies*, N.Y. TIMES (Jun. 17, 2012), <http://www.nytimes.com/2012/06/18/nyregion/thousands-march-silently-to-protest-stop-and-frisk-policies.html?pagewanted=all>. Similarly, during a June 13 student debt march, police ordered the sidewalk “closed,” and made a number of arrests of those who remained on it. (Witnessed by member of Research Team). On May 30, when a protest march reached Times Square, officers let some protesters cross the street heading north. Officers then blocked the second half of the march from also crossing, even with the lights. Shortly after, police again sought to disperse the assembly from the sidewalks of Times Square, threatening arrest and telling protesters that they were blocking pedestrian traffic. (Witnessed by member of Research Team). On October 15, the sidewalks around Washington Square Park were closed to protesters: See Interview with protester (ZZY99) (2012) (described de-escalating a situation in which officers told protesters they had to leave the sidewalk or they would be arrested) (also witnessed by members of Research Team). During the Brooklyn Bridge protest on October 1, the pedestrian walkway above the roadway was forcibly closed by officers while the 700 protesters on the roadway were detained and arrested. Individuals were pushed back and threatened with arrest if they did not leave the walkway. (Witnessed by members of Research Team). On November 5, police closed the sidewalks around Foley Square, and made a number of arrests of people who refused to move, asked why the sidewalks were closed, or did not hear any dispersal orders. (Witnessed by members of Research Team). See Al Baker, *Police Force Wall Street Protesters Off Sidewalks*, N.Y. TIMES (Nov. 5, 2011, 9:16 PM), <http://cityroom.blogs.nytimes.com/2011/11/05/police-force-wall-street-protesters-off-sidewalks/> (A police spokesperson stated that “the volume of protesters made it difficult for others to walk safely on the sidewalk, causing people to spill into the street,” the surrounding area was described as “desolate.”). Sidewalks were also closed on May 1: New York Civil Liberties Union, *Free Speech Threat Assessment # 3* (April 29, 2012-May 29, 2012), available at www.nyclu.org/protest (documenting repeated sidewalk closures).

them with no cause.”³¹⁵ In one typical example, on July 11, 2012, after police and Brookfield guards aggressively forced numerous protesters out of Zuccotti Park and applied a series of shifting and arbitrary rules in the park, approximately twenty protesters assembled on a sidewalk across the road. The protesters peacefully sang and chanted. Officers mobilized, and ordered the sidewalk fully “closed,” citing protester “safety” reasons and “pedestrian traffic,” although there was zero other pedestrian traffic or any evident public order concerns. A member of the Research Team asked officers why they did not simply, as per the relevant law, ensure that protesters only assembled on half of the sidewalk, rather than dispersing the entire group under threat of arrest. She was told that the officers “did not know” and were “just following orders,” and that if she did not move, she would be arrested. Protesters began to chant, “I get confused / when the law / changes every day.”³¹⁶ One interviewee, reflecting on the frequent sidewalk closures, said:

When they close the whole sidewalk—that isn’t about ensuring other New Yorkers can walk down the streets. That is about control. Why don’t they just clear half the sidewalk?³¹⁷

Without declaring a sidewalk fully “closed,” police have also very frequently³¹⁸ announced that those present were “blocking pedestrian traffic,” and would be arrested if they did not move on. Such threats and arrests have occurred even where there are no other nonprotester pedestrians, or where pedestrians could clearly pass by.³¹⁹ On October 18, for example, the police arrested a prominent author and her partner while they stood on the sidewalk. After attending a private function, the author had expressed concern that a small group of protesters had been forced to the opposite side of the street by police threats of arrest; she insisted that it was not a violation to walk on the sidewalk as a sign of protest. When she attempted to do so, however, police arrested her and her partner. The charges were eventually dropped.³²⁰

On March 24, one activist reported that she was threatened with arrest when she, with five or six others, was doing “jail support”—waiting on the sidewalk outside of jail for other protesters to be released to provide them legal and social support. Officers repeatedly came out to tell them that they were “blocking the sidewalk.” The activist, who had committed to jail support because she believed it entailed a “low risk” of arrest, told the officers that they were not blocking the sidewalk; she also asked passing pedestrians whether they could indeed pass. Officers, however, said that if the jail support team stayed, they “were going to be arrested.”³²¹ NYCLU reported a similar incident on June 13.³²²

³¹⁵ Interview with Michael Tracey (Journalist) (2012). See also Interview with Tim Weldon (Protester trained in post-conflict development) (2012) (stating that “police close sidewalks all the time.”).

³¹⁶ Witnessed by member of Research Team. See also StopMotionsolo, *Evening jamming wit da #nypd and ohm*, USTREAM (Jul. 11, 2012, 11:35 PM), <http://www.ustream.tv/recorded/23929060>.

³¹⁷ Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

³¹⁸ The practices are highly inconsistent, and identical or similar protest activity has received very different police treatment. On December 12, for example, protesters held a march and then short assembly at Goldman Sachs, to protest corporate greed. Officers allowed protesters to gather on the sidewalk outside Goldman Sachs, and hold a “press conference.” On January 29, police let protesters assemble on the sidewalks around a community center for a short education talk about the history of the center. (Witnessed by member of Research Team).

³¹⁹ Interview with Bina Ahmad (Lawyer) (2012) (stating that lots of people are arrested for blocking the sidewalk although they are not).

³²⁰ Witnessed by members of Research Team. See also Naomi Wolf, *Naomi Wolf: how I was arrested at Occupy Wall Street*, GUARDIAN (Oct. 19, 15:15 PM), <http://www.guardian.co.uk/world/us-news-blog/2012/mar/05/new-york-city-naomi-wolf-occupy/> *New York City declines to prosecute Naomi Wolf for Occupy arrest*, GUARDIAN (Mar. 5, 2012, 4:40 PM), <http://www.guardian.co.uk/commentisfree/cifamerica/2011/oct/19/naomi-wolf-arrest-occupy-wall-street>.

³²¹ Interview with protester (QQQ11) (2012).

³²² New York Civil Liberties Union, Free Speech Threat Assessment # 4 (May 30, 2012-June 17, 2012), available at www.nyclu.org/protest (documenting that “a legal observer witnessed an officer threaten to charge those waiting outside the seventh precinct with disorderly conduct if just one pedestrian had to change course to walk around them, even though the group was taking up far less than half of the sidewalk.”).

The pervasive NYPD practice of frequently “closing” sidewalks and forcibly moving along peacefully assembled individuals violates the freedoms of expression and assembly. There may be circumstances in which the closure of otherwise public space is a proportionate and necessary measure to achieve a legitimate aim, such as public safety. Dispersal and closure may be appropriate where, for example, a protest has taken on a violent character, and the closure is needed to restore public order.³²³ But mere assembly on public sidewalks is not just cause to move protesters on, or to “close” a sidewalk. If protesters are in fact actually “blocking” pedestrian traffic, whether intentionally or inadvertently, police should facilitate assembly rights by informing protesters that they are free to protest on sidewalks, and should assist protesters to ensure that building entrances are not blocked and that others may pass.

The NYPD’s frequent practice of “closing” sidewalks during protests also appears to violate U.S. constitutional law, which protects First Amendment activity on public sidewalks.³²⁴ The U.S. Supreme Court has held that:

[W]hen the use of its public streets and sidewalks is involved....a [government] may not empower its....officials to roam essentially at will, dispensing or withholding permission to speak, assemble, picket, or parade according to their own opinions regarding the potential effect of the activity in question on the “welfare,” “decency,” or “morals” of the community.³²⁵

Many areas of New York City are heavily congested with pedestrian traffic, and the difference in treatment between congested resident or tourist pedestrian traffic and protester pedestrian traffic is at times stark. Lawyers described the police enforcement against protesters of the disorderly conduct statute for blocking pedestrian traffic as a tactic to “stifle political protest” that, when combined with physical force, created “a climate of fear.”³²⁶

4. Arrests of Protesters Sleeping or Lying on Sidewalks

In April 2012, following the eviction of Zuccotti Park and the subsequent strict enforcement of closing times at Union Square, some protesters sought to find new ways to engage in visible 24-hour public protest. They particularly sought to engage in lawful 24-hour protest.

From April 6, protesters slept on the sidewalks in front of banks near Union Square, and on April 9, they began to sleep on the sidewalks around the New York Stock Exchange and on Wall Street, stating that they intended to highlight the role of the financial system in perpetuating inequality and to call attention to the banks which had received bailouts.³²⁷ These “sleepful protests” were also employed in other cities.³²⁸ Protesters cited to (and read

³²³ See Part I, Chapter Three, “International Law and Protest Rights.”

³²⁴ Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark.

³²⁵ *Shuttlesworth v City of Birmingham*, Ala., 394 U.S. 147, 153 (1969).

³²⁶ Interview with Bina Ahmad (Lawyer) (2012). See also Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012) (noting that protesters are often charged with blocking pedestrian traffic); Interview with Meg Maurus (Lawyer) (2012).

³²⁷ See Colin Moynihan, *Occupiers Hold a Slumber Party Near Union Square*, (April 6, 2012, 10:54 AM), <http://cityroom.blogs.nytimes.com/2012/04/06/occupiers-hold-a-slumber-party-near-union-square/>; Colin Moynihan, *Evicted from Park, Occupy Protesters Take to the Sidewalks*, N.Y. TIMES (April 12, 2012), <http://www.nytimes.com/2012/04/13/nyregion/evicted-from-park-occupy-protesters-take-to-the-sidewalks.html>. See also Christopher Robbins, *Occupy’s New Sleepful Protests Sits At Neighborhood Nexus*, GOTHAMIST (April 14, 2012, 1:50 PM), http://gothamist.com/2012/04/14/occupys_new_sleepful_protest_sits_a.php (recounting political conversations between protesters and passersby).

³²⁸ Ian Duncan, *Occupy takes protest to street -- the one near Bank of America*, L.A. TIMES (Apr. 12, 2012), <http://articles.latimes.com/2012/apr/10/nation/la-na-nn-occupy-dc-sleepful-protest-20120410>.

out to officers)³²⁹ the judicial opinion in *Metropolitan Council, Inc. v Safir* 99 F.Supp.2d 438 (2000), a case which upheld the right to engage in sidewalk sleeping as a form of protest, as long as building entrances were not blocked and half the sidewalk was clear. In *Safir*, Judge Kimba M. Wood held that:

[T]he First Amendment of the United States Constitution does not allow the city to prevent an orderly political protest from using public sleeping as a means of symbolic expression.³³⁰

However, the method of protest ended the week of April 16, when police began to arrest protesters, saying that they were no longer permitted to sit or lie on the sidewalks.³³¹ Similar arrests also occurred in other cities.³³²

5. Protest Permits and “Blocking Vehicular Traffic” Arrests

Most of Occupy’s public marches and rallies in New York City have not been carried out with the permits required by local law. Generally, the NYPD has a zero-tolerance approach to unpermitted street marches, and requires such actions to take place on sidewalks only. The police employ force projection (usually via large numbers of officers on foot and on scooters, forming a “moving barricade”³³³), verbal orders, arrest threats, physical force, and arrests to enforce sidewalk marching.

As described above, to the extent that governments regulate protests, they should do so through *notice*, not *permit* schemes, and authorities should facilitate peaceful protests, including where permits required by local law are not sought by protesters, and including where some disruption of traffic occurs.³³⁴ Any lawful restrictions on assembly rights—for the purpose of, for example, ensuring the free flow of traffic—must be proportionate and necessary to achieve a legitimate aim.³³⁵ In international human rights cases where protesters conducted intentional sit-ins in the street and extensively blocked traffic, their arrest and dispersal by police have been held to be justified restrictions on assembly rights.³³⁶

³²⁹ See Colin Moynihan, *Occupiers Hold a Slumber Party Near Union Square*, N.Y. TIMES (April 6, 2012, 10:54 AM), <http://cityroom.blogs.nytimes.com/2012/04/06/occupiers-hold-a-slumber-party-near-union-square/> (“Protesters handed out slips of paper that ... briefly outlined the result of a court challenge to a ban on sleeping in public places ... [a protester] carried a large placard that bore part of the decision in the case”).

³³⁰ Research credited to the Constitutional Litigation Clinic, Rutgers School of Law—Newark: *Metropolitan Council, Inc v. Safir*, 99 F.Supp.2d 438 (S.D.N.Y. 2000).

³³¹ See Colin Moynihan, *Four Protesters Arrested in Sleep Out Near Stock Exchange*, N.Y. TIMES (April 16, 2012, 11:14 AM), <http://cityroom.blogs.nytimes.com/2012/04/16/four-protesters-arrested-in-sleep-out-near-stock-exchange/?ref=colinmoynihan>; Colin Moynihan, *Wall St Protesters Lying on Sidewalk Arrested*, N.Y. TIMES (April 20, 2012, 8:56 PM), <http://cityroom.blogs.nytimes.com/2012/04/20/wall-st-protesters-lying-on-sidewalk-are-arrested/>. (reporting a police captain order at 6am that “Sitting or lying down on the sidewalk is not permitted ... Anyone who is sitting or lying down must now get up or be subject to arrest.” Photos of the protests are available here: <http://occupiedstories.com/?s=sleepful+protest&x=0&y=0>. See also NYCLU, Free Speech Threat Assessment # 2 (April 11, 2012–April 28, 2012), available at www.nyclu.org/protest (documenting arrests of those engaged in sidewalk sleeping protests).

³³² Benajmin Freed, *Occupy D.C. Protesters Arrested After Sleeping Outside Bank of America*, DCIST (Apr. 12, 2012, 4:45 PM), http://dcist.com/2012/04/occupy_dc_protesters_arrested_after.php (Seven people who were arrested in Washington, D.C. while sleeping outside a private bank were charged with obstructing pedestrian traffic). See also Use of State House, State House Grounds, State Buildings and State Grounds, S.C. Emergency Reg. 19.480, (Dec. 20, 2011); BJ Austin, *Occupy Dallas Days Numbered*, KERA NEWS FOR NORTH TEXAS (Oct. 12, 2011, 7:33 PM), <http://keranews.org/post/occupy-dallas-days-numbered> (“City officials said they will begin issuing warnings for sleeping in public, then tickets, then possible arrests.”).

³³³ Interview with protester (NNN44) (2012).

³³⁴ See Part I, Chapter 3 “International Law and Protest Rights.”

³³⁵ *Id.*

³³⁶ *Id.*

Many hundreds of Occupy Wall Street protesters have been arrested while (allegedly or actually) marching in the streets and charged with “blocking vehicular traffic.” Yet few of Occupy’s street actions have been cases of intentional civil disobedience roadblock “sit-ins”; rather, they have most frequently been moving street processions. On the facts, it is disingenuous to contend that the exceptionally strict enforcement by the NYPD of the prohibition against protesters walking in the streets is actually about meeting a potentially legitimate objective of allowing the free flow of vehicular traffic. First, the prohibition is frequently enforced whether or not protesters are actually “blocking” traffic: Police have arrested individual protesters who have momentarily stepped into the street, walked on the street directly alongside the sidewalk, between parked cars, alongside cars stopped in heavy traffic congestion, and on empty streets.³³⁷ Second, where protest groups have marched in the streets, any traffic “blocking” has often been extremely limited in time—typically of just a few minutes as the marchers walked down city blocks chanting and holding banners. Third, police often give *more* leeway to larger protests that are in, or veer into, the streets.³³⁸ This is counterintuitive to the ostensible purpose of the disorderly conduct law as larger protests have greater capacity to cause a disturbance to traffic. Fourth, many of the sidewalk marches are accompanied by police scooters, police on foot, surveillance police, and police vehicles that themselves take up half of or the entire road.³³⁹ This heavy police presence moves alongside the protesters, and is used to keep protests on the sidewalk. Generally, however, the extremely heavy police presence *itself* entirely blocks traffic, often in a more comprehensive manner than the protest alone ever could.

The zero tolerance approach has the effect of suppressing lawful protest, and in some cases, appears to be motivated by an attempt to control, rather than achieve any legitimate purpose.³⁴⁰

6. Arrests, Conditional Dismissal of Charges, Stay-Away Orders

Most of those arrested at Occupy protests have been charged with disorderly conduct.³⁴¹ Many of those arrested have been offered conditional dismissals (“Adjournment Contemplating Dismissal,” or ACD) by prosecutors. An acceptance of an ACD means that the arrested individual accepts an adjournment of the case for a time-limited period (generally six months), with the understanding that, if no additional charges arise, the first charge will be dropped. ACDs generally intend to serve positive goals in the criminal justice system—i.e., quickly disposing of generally minor charges and encouraging law-abiding behavior. As applied in the protest context, and especially combined with both heavy police enforcement of minor rules and arbitrary and unpredictable enforcement, ACDs can function

³³⁷Colin Moynihan, *Wall St. Protesters Lying on Sidewalk Are Arrested*, N.Y. TIMES (Apr. 20, 2012, 8:56 PM), <http://cityroom.blogs.nytimes.com/2012/04/20/wall-st-protesters-lying-on-sidewalk-are-arrested/> (OWS organizers said eight protesters were arrested for lying on the sidewalk. Another man with a camera and tripod was arrested while standing on the sidewalk).

³³⁸ See e.g., John Leland & Colin Moynihan, *Thousands March Silently to Protest Stop-and-Frisk Policies*, N.Y. TIMES (Jun. 17, 2012), <http://www.nytimes.com/2012/06/18/nyregion/thousands-march-silently-to-protest-stop-and-frisk-policies.html?pagewanted=all> (reporting that although “protesters did not have a permit, organizers said that their talks with the police had been cordial and cooperative, and that they did not expect conflict); Interview with protester (NNN44) (2012) (stating that police “compromised” with protesters, letting them in the street at parts but also funneling them to one lane and the sidewalk, but without force).

³³⁹ See e.g., Interview with protester (DDD55) (2012) (“Whenever there is a march, the police motorcade is a typical presence.”).

³⁴⁰ Interview with Michael Tracey (Journalist) (2012) (stating that the “intensity with which [police] enforce the prohibition” suggests “pretextual” and “bad faith” policing).

³⁴¹ The most common charges brought against Occupy protests under New York Penal Law include disorderly conduct (§ 240.20), obstruction of governmental administration (§ 195.05), and resisting arrest (§ 205.30). Other charges occasionally brought have also included trespass (§ 140.05), criminal trespass (§ 140.10), criminal mischief (§ 145), loitering (§ 240.35 (4)) (also known as the “mask law”), unlawfully posting advertisements (§ 145.30), petit larceny (§ 155.25), possession of graffiti instruments (§ 145.65), and assault (§ 120).

to undermine the ability of individuals to engage in protected expression and assembly conduct.

Many protesters have accepted ACDs because of their relatively rapid disposal, low cost, limited time investment, and promise of dismissal. But because the ACD is conditional on not receiving further subsequent charges, protesters often fear continuing engagement in protests. Given the heavy-handed police response, any involvement in future marches risks rearrest, and thus the return of the original charge, on top of the second charge. One civil rights attorney with hundreds of Occupy clients noted that the ACDs have a “chilling impact on peoples’ involvement” in protests;³⁴² another attorney similarly stated that ACDs restrict protester behavior because of the fear of future arrest.³⁴³ One woman interviewed for this report frequently protested at Zuccotti Park. She worked on Wall Street and went to the park during most of her lunch breaks. On one occasion, she was arrested while holding a protest sign and subsequently accepted an ACD. She stated that she then stopped participating in protests because of fear of arrest. She said, “Now I realize they can arrest you anytime they want; they can falsely arrest you. That scares me. I don’t want to get arrested again. I didn’t think that would ever happen to me.”³⁴⁴

Authorities in other cities have employed similar measures, sometimes including direct legal measures to keep protesters away from protest areas. Sometimes called “stay-away” orders, officials have sought court-ordered measures that prohibit individuals from being present at specified locations, including central or popular Occupy protest sites.³⁴⁵ These have been sought, for example, in Boston,³⁴⁶ Oakland,³⁴⁷ and Berkeley.³⁴⁸

Chapter Eight: Other Arbitrary “Rule” Enforcement

Chapters Six and Seven above described the selective and arbitrary enforcement of rules against “blocking” pedestrian and vehicular traffic, the arbitrary closure of public sidewalks and parks, and the shifting “rules” applied at Zuccotti Park. In addition, myriad shifting, selectively and inconsistently enforced, and sometimes nonexistent “rules” have been threatened and applied against Occupy protesters. International law requires that legal restrictions on protest rights be formulated with sufficient precision to enable an individual to know what activities are prohibited or permitted, and any restrictions must in fact be prescribed by law.³⁴⁹

³⁴² Interview with Gideon Oliver (Civil rights lawyer, current President of NLG-NYC (title for identification purposes only)) (2012).

³⁴³ Interview with Bina Ahmad (Lawyer) (2012).

³⁴⁴ Interview with protester (FFF33) (2012).

³⁴⁵ Judges may issue the orders prior to conviction as a condition of bail, as part of a plea agreement, or as a condition of a charge conversion. Stay-away orders are typically used to prevent individuals accused of violent crimes or property crimes from returning to the location of that crime.

³⁴⁶ See *Judge Bans Two Occupy Boston Protesters From Dewey Square*, CBS BOSTON (Dec. 9, 2011, 3:38 PM), <http://boston.cbslocal.com/2011/12/09/judge-bans-two-occupy-boston-protesters-from-dewey-square/> (Two protesters were charged with disorderly conduct after allegedly pitching a tent and refusing to leave. The judge reportedly ordered them to stay away from Dewey Square while the cases were pending).

³⁴⁷ See Paul T. Rosynsky, *Oakland police chief, Alameda County district attorney defend actions against Occupy Oakland*, MERCURYNEWS.COM (Apr. 13, 2012, 3:02 PM), http://www.mercurynews.com/occupy/ci_20391546/oakland-police-chief-alameda-county-district-attorney-defend (last updated Jun. 20, 2012, 10:36 AM) (as of April 13, 2012, the Alameda County District Attorney has charged 65 people and secured 14 stay away orders in case related to Occupy Oakland).

³⁴⁸ See *BAMN Demands Reversal of Stay-Away Orders Banning Occupy Cal Protesters from UC*, BAMN (Mar. 23, 2012), <http://www.bamn.com/2012/03/26/bamn-demands-reversal-of-stay-away-orders-banning-occupy-cal-protesters-from-uc/>.

³⁴⁹ See Part I, Chapter Three, “International Law and Protest Rights.”

The following is a small sample of the many recorded incidents of nonexistent, or improperly and arbitrarily applied laws limiting Occupy protest activities:

- *Application of “mask law.”* Numerous Occupy protesters have been arrested for violating New York’s “mask law,”³⁵⁰ which prohibits more than two people together from wearing a mask.³⁵¹ In numerous cases, members of the Research Team witnessed police misapply the mask law, seeking to apply it against single protesters wearing a bandana or other face covering.
- *Arrested for drawing with chalk.* While protesters in New York have been permitted at times to draw on sidewalks with chalk, at other times they have been arrested for doing so.³⁵²
- *People’s mic arrest.* On January 3, a woman who was trying to speak through the “people’s microphone” (i.e., she was speaking, and others were repeating her words) was arrested. Video appears to show the woman giving a speech; an officer then approaches her and she is arrested. One witness told a reporter, “I heard the NYPD say ‘if she does it one more time [mic checks], go get her.’ Arrest happened seconds later. No warning.”³⁵³ A second protester then also spoke through the people’s mic after the first protester was taken out of the vicinity. He asked fellow protesters, “Is this the America you want to live in? Where you express your First Amendment [rights], and they throw you out the door?” He was then immediately grabbed by officers and taken away.³⁵⁴
- *Rule against walking with traffic walk signal.* On a number of occasions, contrary to the usual practice of rigorously enforcing all traffic rules, police have prohibited protesters from walking *with* pedestrian walk signals.³⁵⁵

³⁵⁰ The law prohibits “[b]eing masked or in any manner disguised by unusual or unnatural attire or facial alteration, [and] loiter[ing], remain[ing] or congregat[ing] in a public place with other persons so masked or disguised[.]” N. Y. Pen. Law § 240.35 (4). According to the Wall Street Journal, New York’s mask law dates to 1845, and was enacted after tenant farmers, facing eviction, wore masks as part of an attack on the landlord’s agents. See Sean Gardiner and Jessica Firger, *Rare Charge Is Unmasked*, WALL ST. JOURNAL (Sept. 20, 2011), <http://online.wsj.com/article/SB10001424053111904194604576581171443151568.html?mod=e2tw>; Demonstration participants in Michigan have also been arrested for wearing masks. See Adam Martin, *The Weirdest Things Occupy Protesters Get Arrested For*, THE ATLANTIC WIRE (Jan. 25, 2012), <http://www.theatlanticwire.com/national/2012/01/weirdest-things-occupy-protesters-get-arrested/47863/>.

³⁵¹ *Occupy Wall Street Enters its Fourth Day, Tensions Rise (Video)*, HUFFINGTON POST (Sept. 20, 2011, 4:40 PM), http://www.huffingtonpost.com/2011/09/20/occupy-wall-street-enters_n_972267.html (last updated Nov. 20, 2011, 5:12 AM) (reporting that at least 5 people were arrested on September 19, “including some who were arrested on an obscure law banning public assembly while wearing a mask.”); Colin Moynihan, *Wall Street Protests Continue, With at Least 6 Arrested*, N.Y. TIMES (Sept. 19, 2011), <http://cityroom.blogs.nytimes.com/2011/09/19/wall-street-protests-continue-with-at-least-5-arrested/> (reporting that police arrested a woman wearing a plastic mask on the back of her head).

³⁵² See *Id.* (reporting that a “woman was arrested around 11:45 a.m. as she was writing in chalk on the sidewalk on Broadway near Zuccotti Park”); *Occupy Wall Street Protests Persist Amid 6 Arrests*, Post to Headlines, DEMOCRACY NOW! (Sept. 20, 2011), <http://www.democracynow.org/2011/9/20/headlines#17> (interviewing a protester named Jason Ahmadi who says “I was chalking on the sidewalk, when I was surrounded by police officers . . . and they cuffed me, and they took me to the police station.”); Melanie Butler, *The 99% Demand: Occupy Wall Street! Bring Our War \$\$ Home!*, PINKTANK (Sept. 20, 2011), <http://codepink.org/blog/2011/09/the-99-demand-bring-our-war-dollars-home/> (reporting two people were arrested on Broadway for “drawing on the sidewalk with colored chalk” and that one of the arrestees, Andrea Osborne, reported that she was told by an NYPD officer before the arrest that she was allowed to draw on the sidewalk).

³⁵³ OccupyTVNY, *Grand Central Terminal Arrests*, YOUTUBE (Jan. 6, 2012), <http://www.youtube.com/watch?v=Cg6ayc-w3bE&feature=related> (showing a female protester’s arrest after she was peacefully engaging in a mic check; there appeared to be no warning or threat of arrest by the police immediately prior to the arrest); *Occupy Wall Street Protests in Grand Central Against Signing of NDAA: 3 Arrested (VIDEOS)*, HUFFINGTON POST (Jan. 4, 2012), http://www.huffingtonpost.com/2012/01/04/occupy-wall-street-grand-central-station_n_1183180.html.

³⁵⁴ *Id.*

³⁵⁵ See NYCLU, *Free Speech Threat Assessment # 4* (May 30, 2012–June 17, 2012), available at www.nyclu.org/protest (recording an incident on May 30, 2012). Similar arbitrary application of a non-existent rule was applied on June 13, when protesters were told that if they walked *with* a walk signal, they would be arrested.

- *Confiscation of books.* Occupy Wall Street's book collection has been confiscated on numerous occasions from Zuccotti Park. On March 21, it was also reported that the NYPD seized books during Union Square protests.³⁵⁶
- *No whistles or harmonicas.* On June 6, 2012, an officer approached a protester at the front of a march who was occasionally blowing on a whistle. The officer told her that if she did it again, she would be arrested. Shortly thereafter, another protester holding a harmonica was told that if she used it she would be arrested.³⁵⁷
- *No tables in parks.* NYCLU reported that on April 29, 2012, police told protesters at Union Square who were "using a table to hand out free booklets" that tables were not allowed, even though tables are often used by nonprotesters in the park.³⁵⁸
- *Purported application of nonexistent bike helmet law.* On June 6, during a march, police were threatening to arrest anyone who walked in the road or in a bike lane. An adult protester with a bike rode it along the bike lane; police stopped him and told him he was receiving a summons for not wearing a bike helmet. There is no law in New York that mandates bike helmets for those over 14 years old.³⁵⁹
- *Selective and nonapplication of the law.* The police were inconsistent in their application of the law in arresting those purportedly engaged in violence. For example, the Village Voice reported that on April 16, 2012, when a resident assaulted a protester, the protester was arrested by the police, and the police took "no action" against the resident.³⁶⁰

Such enforcement actions violate the principle of legality, which requires that any restriction on protest rights in fact be prescribed by law.³⁶¹

These lawless and arbitrary incidents have had predictable effects on those who witnessed them. One journalist who covered the protests frequently stated: "It seemed like every day you were given arbitrary and senseless orders ... I felt like I could be on the verge of arrest at any time... You just don't know what you might be subject to at any point by the cops."³⁶² One journalist who witnessed police hop a barricade and grab, without notice or any apparent cause, two women who had been marching next to the journalist, said:

People were rattled. I was rattled ... It especially scared people nearby who weren't American. People kept asking "what does it mean," "what just happened?" It was just so unclear why it happened. It was unpredictable and made everyone jittery.³⁶³

(Witnessed by member of Research Team).

³⁵⁶ Al Baker and Colin Moynihan, *Occupy Protesters are Arrested at Union Square Park*, N.Y. TIMES (Mar. 21, 2012), <http://cityroom.blogs.nytimes.com/2012/03/21/police-and-protesters-clash-at-union-square-park/?ref=occupywallstreet>; Interview with protester (OOO33) (2012) (on March 21, at Union Square, police were claiming that OWS library books were "unattended" and thus attempted to confiscate them).

³⁵⁷ Witnessed by member of Research Team. The application of a rule against harmonicas or whistles was especially arbitrary given that many other protesters were chanting loudly and loudly hitting pots and pans.

³⁵⁸ See NYCLU, Free Speech Threat Assessment # 3 (April 29, 2012-May 29, 2012), *available at* www.nyclu.org/protest.

³⁵⁹ Witnessed by member of Research Team.

³⁶⁰ Christopher Robbins, *NYPD Arrest At Least 10 as Occupy Wall Street Seeks Sanctuary on Federal Property* GOTHAMIST (Apr. 17, 2012), http://gothamist.com/2012/04/17/video_ten_arrested_as_ows_tests_pro.php#photo-1 (reporting that: "Minutes later, one of the residents, a short, stocky man with thinning hair got into a shouting match with a protester, and lunged after him, punching him repeatedly. NYPD officers pulled the man through the police line. He was not arrested."); Nick Pinto, *Occupy Wall Street is Finally Occupying Wall Street (Or At Least Trying)*, VILLAGE VOICE (Apr. 17, 2012), http://blogs.villagevoice.com/runninscared/2012/04/occupy_wall_str_52.php (reporting: "One resident waded through a line of police and assaulted one of the vocal occupiers before officers could tear him away. Minutes later, the protester was arrested, cuffed, and thrown into the back of a police truck. Officers took no action against the resident").

³⁶¹ See Part I, Chapter Three, "International Law and Protest Rights."

³⁶² Interview with Michael Tracey (Journalist) (2012).

³⁶³ Interview with journalist (AAA99) (2012).

An independent journalist described her feelings:

I'm terrified of police now....For a while, when cops came near me, my legs would start shaking. Seeing people being arrested for trying to follow orders...I just now have this immediate fear reaction.³⁶⁴

One protester expressed feeling “always at risk of arrest” for “something random,” and that they did not bring non-U.S. citizens friends to protests because of the risk of arrest, regardless of precautions taken.³⁶⁵ Another stated that police are “creating deterrence through their policing style” by making protest activity risky for those who do not want to be arrested.³⁶⁶ An attorney and legal observer noted that there is a “lot of uncertainty for people; I think this probably leads people to stay away, because you aren’t sure what may happen.”³⁶⁷

Chapter Nine: Accountability and Transparency Failures

Protesters, journalists, legal observers and lawyers interviewed for this report often voiced a lack of confidence in the mechanisms available for holding police accountable for misconduct. Common concerns included fear that reporting police abuse to the police would result in retaliation, and a perception that accountability mechanisms were ineffective, or that any punishment would be so minor as to make pursuing the matter pointless.³⁶⁸ Unfortunately, many of these views are borne out by past practice.

The government is obligated to ensure accountability for allegations of police abuse, and impunity for abuse is itself a violation of international law.³⁶⁹ Global policing best practice mandates the creation of effective internal and external accountability mechanisms, including external independent mechanisms that can provide meaningful oversight through abuse complaint investigations and review of police policies.³⁷⁰ While existing accountability mechanisms in New York include a police internal affairs department (the Internal Affairs Bureau) and an external civilian complaint body (the Civilian Complaint Review Board), it is

³⁶⁴ Interview with independent journalist and teacher (SSS88) (2012).

³⁶⁵ Interview with protester (QQQ11) (2012).

³⁶⁶ Interview with protester (NNN44) (2012).

³⁶⁷ Interview with Bina Ahmad (Lawyer) (2012).

³⁶⁸ See e.g., Interview with protester (JJJ88) (2012) (stating belief that senior officers’ responses to abuse allegations give lower ranking officers a “license to bully”); Interview with protester (KKK77) (2012) (expressing frustration about not knowing how to respond to police abuse, and asking to whom a complaint could be made, if those that are meant to be protecting are the source of abuse); Interview with protester (LLL66) (2012) (stating that while she had witnessed police abuse at protests, and felt that police had “unchecked power,” she had never made a complaint to the police because of a desire to minimize interactions with them); Interview with Tim Weldon (Protester trained in post conflict development) (stating that he didn’t think making a complaint would not do anything, and “it is just the way it is. It is just how they treat us. Who would I report this to? I go tell the cops that a cop pushed me?”); Interview with protester (QQQ11) (2012) (“I know there is the review board, but my impression is that they don’t do anything. People feel that in making complaints, they are then targeted.”); Interview with Bina Ahmad (Lawyer) (2012) (“Accountability for the police is so hard to get. And then even when you get it, the punishment is so minor. It often seems pointless.”); Interview with Michael Tracey (Journalist) (2012) (stating that the reputation of the CCRB is that complaints “go into the abyss”).

³⁶⁸ See Part I, Chapter Three, “International Law and Protest Rights.”

³⁶⁹ Id.

³⁷⁰ Id.

widely acknowledged that the current mechanisms alone are inadequate.³⁷¹ In fact, many past reports have documented the infrequent discipline or punishment of serious NYPD officer misconduct.³⁷²

The only known publicly reported case in which an officer was held accountable for police misconduct in relation to Occupy Wall Street was Deputy Inspector Anthony Bologna, who reportedly received a “command discipline” (the loss of 10 days vacation time and a precinct transfer) for pepper spraying protesters outside of department guidelines.³⁷³ Unlike many other big cities that have experienced large-scale protests and significant misconduct complaints in the past decade, there have been no published government reviews assessing NYPD policies or practices with respect to the Occupy protests.

This section describes existing complaint and disciplinary mechanisms, specific concerns related to Occupy Wall Street, and current proposed measures to improve accountability.

1. Internal Discipline and Reporting

A complaint about misconduct—including unnecessary use of force, abuse of authority, discourtesy, or offensive language—by any officer or any civilian can trigger internal disciplinary procedures.³⁷⁴ Any officer “having or receiving” information about misconduct must report it to the Internal Affairs Bureau; nonreporting of misconduct or allegations of misconduct is itself a violation of an officer’s duties.³⁷⁵ However, effective internal officer reporting is notoriously challenging, and officers have publicly stated that they fear or have experienced retaliation for “snitching” on fellow officers.³⁷⁶ It is not known whether any police complaints were made about Occupy-related misconduct, although in some cases police were observed intervening to stop other officers from using force against protesters.³⁷⁷

³⁷¹ See e.g., NYCLU, *Mission Failure: Civilian Review of Policing in New York City (1994-2006)* (2007) (documenting accountability failures); COMMUNITIES UNITED FOR POLICE REFORM, <http://changethenypd.org> (listing member organizations calling for an independent oversight body and other police reforms, including: Bronx Defenders, Center for Constitutional Rights, Center for Race, Crime & Justice of John Jay College of Criminal Justice, Legal Aid Society, NAACP-LDF, NYCLU); *Muslims and Allies Demand NYPD Accountability*, Al-Awda NY (Rally, Feb. 3, 2012), <http://al-awdany.org/2012/02/feb-3-muslims-and-allies-demand-nypd-accountability/> (listing organizations calling for an independent oversight body, including: Arab Muslim American Federation, Council on American Islamic Relations, Muslim American Society, National Lawyers Guild-Muslim Defense Committee, May 1st Coalition for Worker and Immigrant Rights, Asian American Legal Defense Fund, Jews for Racial and Economic Justice, Desis Rising Up and Moving).

³⁷² This conclusion has repeatedly been documented in prior reports. See COMMISSION TO INVESTIGATE ALLEGATIONS OF POLICE CORRUPTION AND THE ANTI-CORRUPTION PROCEDURES OF THE POLICE DEPARTMENT, *Commission Report* (July 7, 1994); HUMAN RIGHTS WATCH, *Shielded From Justice—Police Brutality and Accountability in the United States* (1998); OFFICE OF THE NEW YORK CITY PUBLIC ADVOCATE AND THE ACCOUNTABILITY PROJECT, *Disciplining Police: Solving the Problem of Police Misconduct*, (July 27, 2000); NYCLU, *Mission Failure: Civilian Review of Policing in New York City (1994-2006)* (2007).

³⁷³ Al Baker, *Commander Who Pepper-Sprayed Protesters Faces Disciplinary Charges*, N.Y. TIMES (Oct. 18, 2011), <http://www.nytimes.com/2011/10/19/nyregion/commander-who-pepper-sprayed-wall-street-protesters-faces-disciplinary-charges.html>; Jonathan Dienst and Shimon Prokupecz, *Pepper-Spray Cop Transferred to Staten Island, Where He Lives*, NBC New York (Oct. 26, 2011), <http://www.nbcnewyork.com/news/local/Pepper-Spray-Cop-Anthony-Bologna-Tony-Transfer-Occupy-Wall-Street-132629613.html>.

³⁷⁴ NYPD Patrol Guide, 2011-A Edition (01/11), 206-01, 207-21, 207-30, 207-31. Civilians can report complaints in person at any precinct, or by mail or phone: NYPD Patrol Guide, 2011-A Edition (01/11) at 207-31.

³⁷⁵ NYPD Patrol Guide, 2011-A Edition (01/11) at 207-21.

³⁷⁶ Joseph Goldstein, *New York Officers Face Retaliation for Reporting Corruption*, N.Y. TIMES (June 24, 2012), <http://www.nytimes.com/2012/06/25/nyregion/new-york-police-officers-face-retaliation-for-reporting-corruption.html?pagewanted=1&ref=newyorkcitypolicedepartment>.

³⁷⁷ See e.g., On November 17, 2011 as a police officer was striking a protester several times with a downward stabbing motion of his baton, another officer ran up and grabbed the first officer, stopping him and leading him away: See yesmenmedia, *NYPD Officer #2886 Beats OWS Protester (17.11.2011)*, YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=O1TXFal5_XQ&feature=related.

Police use of force or restraint resulting in serious injury triggers mandatory reporting.³⁷⁸ A reporting requirement is also triggered whenever an officer is “involved in an incident or confrontation with media personnel or media personnel are assaulted, harassed.”³⁷⁹ If such an incident occurs, a supervisory officer must conduct an immediate investigation.³⁸⁰

On-site identification and accountability. Because of the near-impossibility of accountability without identification of the officer allegedly responsible for misconduct, it is essential that officers be readily identifiable by name and badge number at the scene of any incident. In New York, generally, officers’ names and badge numbers are visible on their uniforms, and they are usually verbally provided when requested. The NYPD Patrol Guide provides that an officer may be subject to command discipline if they fail to give their name and shield number when requested.³⁸¹ However, numerous cases of apparent attempts to obstruct identification were observed or recorded. For example, one journalist stated that on October 14, 2011, after an officer in a suit punched him, the officer repeatedly refused to provide his name.³⁸² The journalist described the incident as “absurd”:

I was struck by a senior officer. But I couldn’t even do the basic thing—to get his name. I felt like there was no recourse.³⁸³

In a subsequent incident, the journalist stated that a senior member of the NYPD legal department (whose identity he subsequently confirmed) pushed him against a wall and also refused to give his name. The journalist stated that after finding out that the individual was from the legal department, “Knowing that he was in the legal department, this just crystalized for me that the NYPD was lawless.”³⁸⁴

On June 13, 2012, as described above, witnesses (including a member of the Research Team) observed an officer kick a protester in the face. The witnesses attempted to obtain the name and badge number of the officer responsible, to enable subsequent investigation. However, the officer refused to provide it and moved away. At least two separate groups of other officers actively obstructed the witnesses from obtaining the officer’s name, despite repeated requests and explanations of the purpose. The responsible officer was observed getting into a police van, which then drove away.³⁸⁵

2. External Civilian Complaint and Oversight Mechanisms

New York’s Civilian Complaint Review Board (CCRB) has the power to “receive, investigate, hear, make findings and recommend action upon complaints by members of the public against members of the police department that allege misconduct.”³⁸⁶

CCRB limitations. While the CCRB provides a potentially important avenue for civilian complaint, in its current form it is inadequate to provide the required external oversight. The CCRB faces perennial resource constraints, which limits staff numbers and investigation

³⁷⁸ NYPD Patrol Guide, 2011-A Edition (01/11) at 212-53.

³⁷⁹ NYPD Patrol Guide, 2011-A Edition (01/11) at 212-49.

³⁸⁰ Id.

³⁸¹ NYPD Patrol Guide, 2011-A Edition (01/11) at 206-03.

³⁸² Table entry 26.

³⁸³ Interview with Michael Tracey (Journalist) (2012).

³⁸⁴ Interview with Michael Tracey (Journalist) (2012).

³⁸⁵ (This incident was witnessed by a member of Research Team). See also Interview with J.A. Myerson (Journalist) (2012) (on March 17, 2012, witnessed a protester ask an officer for his badge number, while standing on a sidewalk during a march. The officer went on to the sidewalk, grabbed the protester, and arrested him.).

³⁸⁶ N.Y. Charter § 440(c)(1).

capacities.³⁸⁷ Crucially, it is not sufficiently independent from the NYPD. Following a review of a decade of CCRB and NYPD disciplinary practices, the NYCLU concluded that “the city’s civilian oversight system has failed” and had been “subverted and co-opted by the police department.”³⁸⁸ NYCLU documented numerous problems, including NYPD failures to cooperate with the CCRB, undue deference to police, internal affairs conflicts, retaliation by police, and lenient disciplinary standards for police misconduct.

One of the structural impediments to effective independent investigation is that the CCRB has little power to prosecute or discipline officers. While it can investigate and make a determination as to whether an allegation is substantiated, it then refers the matter to the NYPD, which can decide to “drop the case, negotiate a plea with the officer, or prosecute the case in the NYPD’s Trial Room.”³⁸⁹ On April 2, 2012, the CCRB and the NYPD signed a Memorandum of Understanding providing the CCRB with the power to undertake prosecution of civilian complaints.³⁹⁰ While this is a step in the right direction, the MOU retains the Police Commissioner’s prerogative to request that the CCRB refrain from prosecution, and to make final disciplinary determinations.³⁹¹

Structural reform and the need for an Inspector General. In addition to failing to adequately address individual allegations of misconduct, the CCRB has rarely investigated policy or practice issues, and thus has not addressed the structural reform needs of the NYPD. The NYPD is the only major police department in the United States without an independent oversight body set up to provide this kind of review.³⁹² To address the accountability vacuum, improve police practices, and make communities safer for all New Yorkers, New York state legislators³⁹³ and New York City Council members³⁹⁴ introduced Bills in February and June 2012, respectively, to provide for an Inspector-General with the power to review NYPD policies and practices. The issues and concerns documented in this report provide additional cause to urgently pursue the creation of an independent Inspector-General for the police.

3. Public Transparency

To comply with international law restrictions on the use of force, authorities are required to develop clear policies on protest policing, and to make these policies publicly available.³⁹⁵ However, crucially, there is next to no transparency about the protest policing policies being applied by the NYPD to Occupy protests. While the NYPD’s Patrol Guide contains detailed

³⁸⁷ Civilian Complaint Review Bd. N.Y.C. January-June 2011 Report 3 (2011), available at http://www.nyc.gov/html/ccrb/pdf/ccrbsemi2011_Jan_Jun.pdf (referring to budget reductions and staff constraints).

³⁸⁸ NYCLU, *Mission Failure: Civilian Review of Policing in New York City (1994-2006)* (2007), http://www.nyclu.org/files/ccrb_failing_report_090507.pdf. See also Paul G. Chevigny, *Police Violence: Causes and Cures*, 7 J. of L. & Pub. Pol’y 90 (1998).

³⁸⁹ Brief for Petitioner for a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules ¶ 10 NYCLU v NYPD, No. 12/102436, (N.Y. Sup. Ct. April 13, 2012) (on file with Research Team).

³⁹⁰ Memorandum of Understanding Between the Civilian Complaint Review Board (CCRB) and the Police Department (NYPD) of the City of New York Concerning the Processing of Substantiated Complaints, *available at* http://www.nyc.gov/html/ccrb/pdf/APU_MOU.pdf.

³⁹¹ *Id.* at [2-8].

³⁹² NYCLU, *NYPD Inspector General Bill Introduced in City Council* (June 13, 2012), at <http://www.nyclu.org/news/nypd-inspector-general-bill-introduced-city-council>.

³⁹³ See State Senator Kevin Parker, *Legislators Seek Independent WatchDog Over the NYPD* (Feb. 9, 2012) (press release on file with Research Team). In introducing the legislation, and explaining why it was needed, the legislators referred to stop and frisk, surveillance of the Muslim community, and the “mistreatment of the Occupy Wall St. protesters.” The Bill is available at: <http://open.nysenate.gov/legislation/bill/S6407-2011>.

³⁹⁴ Int 0881-2012, *A Local Law to amend the New York city charter, in relation to establishing an office of the inspector general for the New York city police department* (Bill introduced June 13, 2012, currently in Committee). See also David W Chen, *City Council to Weigh Inspector General for the Police Department*, N.Y. TIMES (June 12, 2012), <http://www.nytimes.com/2012/06/13/nyregion/city-council-to-weigh-inspector-general-for-the-police-dept.html>.

³⁹⁵ See Part I, Chapter Three, “International Law and Protest Rights.”

guidance for police on a wide range of matters, the NYPD either does not have or has not made public its current protest policing guidelines.³⁹⁶ Other large cities, including Oakland (which created its model protest policing guidelines in consultation with the ACLU) and Washington D.C., have publicly available demonstration policies. Indeed, it is essential that such policies be publicly and readily available so that the public can assess whether applicable guidelines are appropriate, and so that they know what to expect when participating in protected assembly and expressive activity.

In addition, with the sole exception of Deputy Inspector Bologna's case, no existing police records about internal complaints, internal affairs investigations, or disciplinary sanctions related to Occupy Wall Street are public.³⁹⁷ The nature and outcome of any other internal affairs investigations is unknown. Thus far, the police have not provided documents³⁹⁸ or have refused to provide documents pursuant to³⁹⁹ Freedom of Information Law requests for such information. The CCRB told the Research Team that it was investigating 49 incidents with respect to Occupy Wall Street.⁴⁰⁰ The CCRB also stated that it might release a policy recommendation on the police response to Occupy Wall Street at some point in the future. At the time of the publication of this report, no further information about applied sanctions was provided.

The Research Team sent multiple written requests to the NYPD to have a meeting about the many issues raised in this report. On May 15, 2012, the NYPD responded, refusing to meet, and stating that this was because of "ongoing criminal and civil litigation" on related issues. The letter also stated that:

It is our view, however, that the police actions that have been taken in connection with Occupy Wall Street activities have been lawful. The legality of the Department's actions have been confirmed in at least two recent court decisions....In addition, the Department has accommodated on an almost daily basis since last fall, numerous large groups of demonstrators and marchers, all with virtually no cooperation, notice or advance planning from Occupy Wall Street representatives. Appropriate, lawful, enforcement action has been taken when necessary and criminal proceedings have been commenced against individuals who have violated the law...⁴⁰¹

³⁹⁶ Neither has the NYPD released any of the post-protest assessments typically conducted by police departments, and presumably carried out by the NYPD frequently since September 17, 2011.

³⁹⁷ This problem is not unique to Occupy Wall Street cases. The NYCLU has been seeking, first through a FOIL request and since April 2012 through litigation, information from the NYPD about its adjudication of charges against officers found to have engaged in misconduct by the CCRB, including records of NYPD trials, for all cases since 2001. The NYPD has refused to provide any of this information, and on April 13, 2012, the NYCLU instituted legal proceedings to force disclosure. See *NYCLU v NYPD*, No 12/102436 (N.Y. Sup. Ct. April 13, 2012) Brief for Petitioner filed for a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules (April 13, 2012) (on file with Research Team).

³⁹⁸ Members of the Research Team filed a Freedom of Information Law request on April 19, 2012. The request is available at: <http://www.chrgj.org/projects/docs/OWSFOILS.pdf>. On April 24, 2012, the Records Access Officer at the NYPD Legal Bureau responded that review was necessary to determine whether the records could be located, and whether exemptions to release applied. The letter stated that a determination would be provided within 20 business days. (Letter on file with Research Team). On May 22, 2012, and July 22, 2012 the NYPD Legal Bureau wrote further letters, which stated that the "office requires additional time to determine your request." (Letters on file with Research Team). At the time of publication, no further responses had been received.

³⁹⁹ The online publication *Truthout* filed a FOIL request on January 29, 2012. It was denied in full on June 11, 2012 (request and denial on file with Research Team).

⁴⁰⁰ The CCRB stated that "incidents" may include more than one complaint, and that the CCRB grouped together all of the individual complaints from one "protest event" into an "incident." The CCRB also stated that it had referred 36 incidents to other jurisdictions.

⁴⁰¹ Letter from Thomas P. Doepfner, Assistant Deputy Commissioner, City of New York Police Department, Legal Bureau (May 15, 2012). See Appendix II.

In response, the Research Team made a further request to meet, offering to do so under any restrictions considered necessary by the NYPD, in light of litigation concerns. However, in a letter dated July 16, 2012 the NYPD again refused to meet at all.⁴⁰² These complete refusals to meet are in stark contrast to the responses of police in other cities where the *Protest and Assembly Rights Project* is conducting case studies. Police departments in Boston and the Bay Area operated with greater transparency, in that high-level officials agreed to meet with members of the Project.

⁴⁰² Letter from Thomas P. Doepfner, Assistant Deputy Commissioner, City of New York Police Department, Legal Bureau (July 16, 2012). *See* Appendix II.

Findings and Recommendations

Full respect for assembly and expression rights is necessary for democratic participation, the exchange of ideas, and for securing positive social reform. The rights are guaranteed in international law binding upon the United States. Yet U.S. authorities have engaged in persistent breaches of protest rights since the start of Occupy Wall Street.

The most egregious violations include frequent alleged incidents of unnecessary and excessive police use of force against protesters, bystanders, journalists, and legal observers; constant obstructions of media freedoms, including arrests of journalists; unjustified and sometimes violent closure of public space, dispersal of peaceful assemblies, and corralling and trapping protesters en masse. Pervasive surveillance of peaceful political activity, arbitrary and selective rule enforcement, and restrictions on independent protest monitoring also raise serious concerns. The government has also failed to make transparent critical policies concerning law enforcement activities.

Under international law, the United States is required to prevent continuing abuses, remedy past violations, and ensure that protest rights are respected. Yet there have been limited investigations and near-complete impunity for violations by authorities of protest rights in connection with Occupy Wall Street.

To remedy past rights violations, and to ensure that the U.S. government meets its legal obligations to respect the freedoms of expression and assembly, the following concrete measures are necessary:

1. The Mayor of New York City should establish an independent review of the response to the Occupy protests in New York.

The independent review should have the mandate to examine the city and police response as a whole, including each of the major concerns documented in this report. The review commission should have sufficient resources, independence, and power, including subpoena power, to carry out its functions adequately, and be required to report publicly on its findings and make policy recommendations.

2. New York City and State authorities must ensure full accountability for violations of the rights of protesters.

The Civilian Complaint Review Board (CCRB), the NYPD Internal Affairs Bureau, the District Attorney's office, the New York City Council, and the Public Advocate for the City of New York should publicly announce and ensure full investigations of the allegations documented in this report and elsewhere. Where appropriate, disciplinary sanctions should be applied and criminal prosecutions instituted. The progress and outcomes of such accountability efforts should be made public.

3. An independent Inspector-General for the police should be created through law, with sufficient independence, capacity, resources and power to provide effective oversight of policing practices.

In response to abusive and discriminatory policing practices in a range of areas (including stop and frisk and surveillance of Muslim populations), both civil society and officials have made numerous calls for an independent Inspector-General. This report adds further evidence of the urgent need for the passage of legislation such as

New York City Council Bill 881, “Establishing an Office of the Inspector General for the NYPD,” currently before the Council.

4. The NYPD must create, publicize, and implement a new protest policing policy for protests that prioritizes respect for civil liberties and human rights.

The policy should ensure that police facilitate, as much as possible, protests and assemblies. The policy should represent a shift to international best practice protest policing, with an emphasis on negotiation and de-escalation over force, arrests, and harassment. The policy should be prepared after public hearings on key protest concerns, be informed by thorough review of protest policing best practice, and be prepared in consultation with civil liberties and human rights experts, including the New York Civil Liberties Union and the National Lawyers Guild–New York City Chapter.

The policy should, among other things:

- a. Affirm the **fundamental civil and human right** to engage in peaceful protest and assembly, and affirm the necessary role of protest in democracy.
- b. Ensure that protests are policed by officers trained in how to facilitate protests, negotiation, de-escalation, and **protest rights**, and that officers are able to receive on-site complaints about police misconduct from protesters.
- c. Affirm the right of individuals to **assemble in public spaces**, including parks and sidewalks, and ensure that public spaces such as sidewalks and parks may only be closed to peaceful assemblies as a last resort if strictly necessary. Kettling or other containment tactics should be prohibited, unless strictly necessary to prevent ongoing or imminent serious harm.
- d. Provide that individuals shall not be arrested because of their perceived association with a group, and require **individualized probable cause** for each arrest.
- e. Ensure that any police **monitoring, infiltration, and surveillance** of protected political activity is highly restricted. Any police filming of political activity should be strictly limited to circumstances in which there is imminent or ongoing serious criminal activity.
- f. Ensure that New York’s protest permit system is reformed into being, at most, a **notification system**. In accordance with international law, the scheme may require protesters to “notify” authorities of certain types of protests, but not require “permission.” The policy should also ensure that, regardless of whether an assembly is notified, police aim to facilitate the protest. The police should also clearly allow for spontaneous assemblies.
- g. Set out clear protocols for the **use of police force** at protests. The policy should acknowledge that even minor uses of unnecessary force may chill assembly rights, and should strictly curtail the lawful use of force. The policy should include clear restrictions on the use of pepper spray and batons, and prohibit the use of scooters to disperse assemblies. The policy should also set out clear guidelines for the use of force against any person engaged in peaceful civil disobedience.

- h. Acknowledge the essential role of **journalists and legal observers** at protests and affirm their ability to carry out their functions unobstructed. The policy should provide that journalists and legal observers should have access to any area where arrests are being made unless their presence would in fact unduly interfere with lawful enforcement action.
 - i. Reform New York’s “**mask law**” so that merely wearing a mask is not the basis for an arrest.
 - j. Set out clear protocols for the use of **flex cuffs**, and ensure that all officers are trained in their proper use, are required to inspect them upon complaint, and are equipped to replace them on site.
5. **New York City authorities should ensure transparency in their protest policing and accountability efforts and release all relevant documents related to its protest policing policies and practices.**
- To this end, the NYPD should publicly release all relevant documents, including: department reviews of protest policing activities; rules, regulations, legal guidelines, or policies guiding or constraining the law enforcement response to protests, including crowd control policies, and use of force; rules, regulations, or policies guiding or constraining the law enforcement interactions with media and legal observers; statistics and other analyses of arrests and police use of force in connection with assembly or expression; the policies and practice of the NYPD Technical Assistance Response Unit (TARU) and the Intelligence Division in connection with public protest; and the status and results of all police misconduct investigations.
6. **If New York officials fail to announce a good-faith intention to undertake the above necessary steps to restore accountability and rights-respecting protest policing, the U.S. Department of Justice must exercise its authority to investigate allegations of official misconduct.**
7. **The UN Special Rapporteurs on assembly, expression, and human rights defenders should seek U.S. government compliance with international human rights law by requesting the United States to respond to the allegations in this report. Where appropriate, the Special Rapporteurs should request a country fact-finding mission to the United States.**

Appendix I

Table of Alleged Police Use of Force Incidents

This Table is a compilation of alleged incidents involving excessive or unnecessary physical force by police officers against Occupy protesters, bystanders, lawyers, legal observers, and journalists from September 2011 through July 2012. The Table documents 130 separate incidents. Some of the incidents refer to multiple instances of police force—for example, in the Table, police tackling multiple protesters at the same time is documented as one incident.

The majority of incidents documented (97) involved *bodily force* (e.g. striking, punching, shoving, grabbing, throwing, kicking, dragging). The Table also documents 41 allegations of *weapon use* (e.g. batons, barricades, scooters, horses, pepper spray), and a number of cases in which plastic handcuffs were allegedly applied too tightly.

The Table includes all incidents documented by the Research Team that raise concerns about the police use of force, and which warrant investigation by authorities. The Table only includes incidents where the available evidence either (a) *strongly suggests* that force was in fact used by police and was unnecessary, unjustified, or excessive; or (b) strongly suggests that force was in fact used by police and *raises legitimate prima facie concerns* that the force was unnecessary, unjustified, or excessive. The Research Team noted where it is unclear from a source whether the force may have in fact been justified—for example, where video evidence is incomplete, where protesters may have been resisting arrest, or where there may have been some other cause for the use of force.

Due to the large number of Occupy protests, not all incidents have been recorded or are accessible. In addition, numerous alleged incidents have been excluded because they could not be sufficiently documented to meet the standards described above. The Research Team's view, therefore, is that the Table, while extensive, represents just a portion of the actual number of incidents.

The sources of the alleged incidents documented here include: interviews conducted by the Research Team with protesters, journalists, lawyers, legal observers, and other witnesses; direct observations by members of the Research Team; videos and photos; social media (verified with the authors whenever possible); civil litigation complaints; and news reports.

Where multiple sources referred to the same incident, they are separated into sub-sections within each incident number, and a description of each source is included. In cases where it is unclear whether a source refers to a separate incident, or where an allegation is general rather than specific in nature (for example, that a protester witnessed many instances of pushing on a certain date), the Research Team appended the additional sources and descriptions onto already-existing incidents to minimize the risk of double-counting.

No.	DATE	CATEGORY	DESCRIPTION OF ALLEGATION	TYPE OF SOURCE	SOURCE
SEPTEMBER 2011					
1	September 19	Grab Pull to ground	A journalist reported that an officer “reached over a curbside barricade” and grabbed a protester. The protester backed away, and the officer “lunged forward, holding onto the man and toppling the metal barricade.” The officer then brought the protester to the ground. The journalist stated that the incident happened after the officer “ordered [the man] . . . to keep moving” and the man “spoke to the inspector for a moment, then lifted his hands and said that he was having difficulty moving.”	News report and photos	Colin Moynihan, <i>Wall Street Protests Continue, With at Least 6 Arrested</i> , N.Y. TIMES (Sept. 19, 2011, 12:28 PM), http://cityroom.blogs.nytimes.com/2011/09/19/wall-street-protests-continue-with-at-least-5-arrested/ .

2	September 20	Throw to ground	Video shows that police surrounded a protester, who appeared to be moving away from the officers, and threw him several feet off an elevated section of tarp onto the ground.	Video	WeAreTheOther99, <i>Wall St Occupiers - Zuccotti Park Violent Arrest - 9/20/11 #OccupyWallStreet</i> , YOUTUBE (Sept. 20, 2011), http://www.youtube.com/watch?v=hTJH4ZZU_oA (throw to ground at 0:23).
3	September 20	Grab Pull	Video shows that an officer grabbed a man (who was holding a camera and appeared to be documenting the arrest of another protester) by the arm and pulled him several feet back. It appeared that the man was given no warning before being grabbed and pulled.	Video	LibertyPlazaRev, <i>"I Can't Breathe!" - Police Shoving at 10:30AM at Liberty Plaza #Occupywallstreet</i> , YOUTUBE (Sept. 20, 2011), http://www.youtube.com/watch?v=ck5fgzK24hg&feature=related (grab and pull at 2:18).
4	September 20	Drag Flex-cuffs (tight)	Video shows that two officers dragged a protester by his legs to the edge of the sidewalk and bound his hands with flex-cuffs.	Video	greekcabanaboy, <i>Occupy Wall Street Violence... Are We Free?</i> , YOUTUBE (Sept. 21, 2011), http://www.youtube.com/watch?v=4ChtkSparT0&feature=related (drag at 1:46).
			A second video shows the same protester lying on the sidewalk with his hands under his back, bound with flex-cuffs. One hand is visibly more discolored than the other and blood is on one of the protester's fingers. The protester stated "this is really, really tight, it's . . . cutting circulation off my hands. It hurts a lot." An officer stated: "we'll get him medical attention." The protester is then taken to a police van; it is unclear whether he received medical attention.	Video	FilteredInc, <i>Occupy Wall Street Violent Treason Police Crime Pig Brutality - Victim Jason Ahmadi Others</i> , YOUTUBE (Sept. 20, 2011), http://www.youtube.com/watch?v=nbOXXOrx6FY (discoloration and statements at 2:06).
5	September 21	Punch (head)	Video appears to show that an officer punched a protester in the head, grabbed him by the neck and pulled him to the ground, without evident provocation.	Video	LibertyPlazaRev, <i>09 21 2011 Police Forcefully Grab a Young Man! #occupywallstreet</i> , YOUTUBE (Sept. 21, 2011), http://www.youtube.com/watch?v=Pu8mlfBrpy8&feature=related%20%281:30%29 (punch and pull to ground at 1:24).
		Grab Pull to ground	A journalist also reported the incident and provided a segment of the above video, stating that the video "shows an officer in a white shirt throwing a right-handed punch at a young man wearing a T-shirt and glasses."	News report	Colin Moynihan, <i>For Commander Tied to Punching Incident, Evidence of a Blow Weeks Earlier</i> , N.Y. TIMES (Oct. 20, 2011, 12:53 PM), http://cityroom.blogs.nytimes.com/2011/10/20/for-commander-tied-to-punching-incident-evidence-of-a-blow-weeks-earlier/ .
6	September 24	Throw against wall (journalist)	A journalist stated that police threw him against a wall while he was attempting to interview protesters. The journalist stated that he was holding a microphone and wearing an ID badge at the time.	News report	John Farley, <i>Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take</i> , SALON (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ .

7	September 24	Push Throw to ground	A journalist reported that an employee at a café near a protest march stated that he went outside and began filming the protest because he “heard a commotion and went outside,” where he saw police “macing women and . . . hitting people with nightsticks.” The employee stated: “As I tried to take a picture I was pushed away. I asked why I was pushed away and then the next thing you know I was being judo flipped.”	News report	John Farley, <i>Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take</i> , SALON (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ (interviewing the employee).
			Video shows that an officer pushed the employee backward. The employee then held both hands in the air and spoke to the officer. A journalist reported that the employee stated that he “stepped back and said to [the officer], ‘Why you gotta push me, man? I’m just taking pictures.’” (A mobile phone can be seen in one hand.) Video shows that the officer then grabbed the employee’s arm and drove into his shoulder, tackling him to the ground.	News report with video	Paul Travisano, <i>Police Tackle Peaceful Cafe Worker at “Occupy Wall Street”</i> , HYPERVOCAL (Sept. 25, 2011, 2:49 PM), http://hypervocal.com/news/2011/police-tackle-peaceful-cafe-worker-at-occupy-wall-street/# (interviewing the employee and providing a video that shows the push at 0:07 and the throw to the ground at 0:12).
8	September 24	Attempted punch Tackle to ground	A video appears to show that an officer swung his fist at a protester. The circumstances surrounding the incident are unclear from the video. It is also unclear whether the punch made contact with the protester.	Video	LibertyPlazaRev, <i>Unedited - Cop Knee on Throat 9/24/2011 #Occupywallstreet</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=5rbXfelyIoM (punch at 0:41).
			Another video appears to show that police tackled the protester to the ground shortly thereafter.	Video	LibertyPlazaRev, <i>Unbelievable Protest Footage. NYPD Drag Girl Across the Street</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=eU9Dx0x9h4A (tackle at 6:33).
9	September 24	Grab Pull to ground Drag	Video shows that an officer reached across orange netting to grab a protester and pulled her to the ground; other officers then dragged her to the curb by her backpack, the straps of which appeared to be wrapped around her neck.	Video	LibertyPlazaRev, <i>Unbelievable Protest Footage. NYPD Drag Girl Across the Street</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=eU9Dx0x9h4A (grab and pull at 3:18, drag at 3:23).
10	September 24	Push to ground	Video shows that a protester was being surrounded and held by three officers. It is unclear whether or not the protester was passively resisting their attempts to lead him away. One of the officers then pushed him to the ground, and the officers then proceeded to handcuff and arrest the protester.	Video	LibertyPlazaRev, <i>NYPD Officers Give Peaceful Protester a Concussion During Occupy Wall Street</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=PcBX5lupbjQ (push to ground at 0:03).

11	September 24	Push (video-grapher)	Video shows that a man with a camera was kneeling down and appeared to be documenting an arrest when an officer pushed him away. The protester was attempting to get closer to the arrest when another officer pushed him backward even further, at which point a third officer threw him to the ground. It is unclear whether the protester initiated contact with the second pushing officer.	Video	AndroidArm, <i>NYPD Pepper Sprays Peaceful Protesters</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=nMoKsZp5iao (pushes at 0:36 and 0:39).
		Grab (head) (video-grapher)			
		Throw to ground (video-grapher)			
12	September 24	Baton (hit) (video-grapher)	Video shows that an officer grabbed the man by his head and swung him against a car and to the ground. Video also shows that the man was still holding the camera at the time he was thrown to the ground.	Video	LibertyPlazaRev, <i>Unbelievable Protest Footage. NYPD Drag Girl Across the Street</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=eU9Dx0x9h4A (grab and throw to ground at 3:05).
			The protester stated in an interview that he was filming "police brutality" when he was pushed and thrown down, and that two officers hit him with batons which "burst open" his shin.	News-paper interview	Ariel Finegold, <i>Swat Alums Face Brutality During "Occupy Wall Street,"</i> DAILY GAZETTE (Oct. 3, 2011), http://daily.swarthmore.edu/2011/10/03/swat-alums-face-police-brutality-during-occupy-wall-street-2/ (interviewing the videographer allegedly thrown to the ground).
12	September 24	Pull to ground	Video shows that two officers pulled a protester to the ground. Prior to the incident, the protester was standing in the street, holding up a flag and yelling, "Is this what you're about?"	Video	LibertyPlazaRev, <i>Unbelievable Protest Footage. NYPD Drag Girl Across the Street</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=eU9Dx0x9h4A (pull to ground at 6:17).
		Knee against throat	Another video appears to show that one of the officers knelt with his knee on the protester's throat for approximately three seconds. It is unclear from the videos whether the protester resisted the officers; however, the videos appear to show that the protester lay still on the ground after being pulled down and did not attempt to get back up.	Video	LibertyPlazaRev, <i>Unedited - Cop Knee on Throat 9/24/2011 #Occupywallstreet</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=5rbXfelyIoM (knee on throat at 0:34).
13	September 24	Push (x 3)	Video shows that an officer pushed three protesters from the street to the sidewalk. The third protester was already walking toward the sidewalk when he was pushed.	Video	greekcabanaboy, <i>Occupy Wall Street Police Abuse</i> , YOUTUBE (Sept. 24, 2011), https://www.youtube.com/watch?feature=player_embedded&v=uiraDbcx14c# (pushes at 1:03).

14	September 24	Tackle (multiple) Baton (jab) (multiple)	A journalist stated that he witnessed “about 20 or 30 police officers tackle people and prod them roughly with police batons.”	News report	John Farley, <i>Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take</i> , SALON (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ .
15	September 24	Pepper spray	A journalist reported that “[p]rotest organizers estimated that . . . about five [people] were struck with pepper spray.”	News report	Colin Moynihan, <i>80 Arrested as Financial District Protest Moves North</i> , N.Y. TIMES (Sept. 24, 2011, 8:31 PM), http://cityroom.blogs.nytimes.com/2011/09/24/80-arrested-as-financial-district-protest-moves-north/?ref=occupywallstreet .
			Video appears to show that an officer sprayed pepper spray into a group of protesters encircled in orange netting; two young women appeared to be particularly close to the spray. Several of the protesters doubled over, clutching their faces; two of the protesters knelt on the ground. One young woman was fully bent over, her face on the ground; the other was screaming and groping around with her hand as if she could not see. It is unclear whether the officer who used the pepper spray was a member of the Disorder Control Unit (the only unit in the NYPD authorized to use pepper spray for disorder control).	Video	USLAWdotcom, <i>NYPD Police Pepper Spray Occupy Wall Street Protesters (Anthony Balogna)</i> , YOUTUBE (Sept. 24, 2011), http://www.youtube.com/watch?v=TZ05rWx1pig (pepper spray at 0:38).
			Two journalists reported that the officer was disciplined with the loss of ten vacation days. This is the only known discipline NYPD has imposed on an officer for an Occupy-related incident.	News report	Richard Esposito & Dean Schabner, <i>NYPD Cop Disciplined Over Occupy Wall Street Pepper Spray</i> , ABC NEWS (Oct. 18, 2011, 8:43 PM), http://abcnews.go.com/blogs/headlines/2011/10/nypd-cop-disciplined-over-occupy-wall-street-pepper-spray/ .
16	September 24	Pepper spray	A protester testified that police used pepper spray on her to prevent her from videotaping an arrest.	Court testimony	Examination before Trial of Kelly Hanlin, Hanlin v. City of New York, No. 12 CIV 0992 (S.D.N.Y. 2012).
17	September 24	Flex-cuffs (tight)	A journalist who was arrested reported that he met a woman “in visible pain from the plastic handcuffs” while riding in a police van. The journalist reported that the woman was arrested after she took a picture of the protests.	News report	John Farley, <i>Jailed for Covering the Wall Street Protests: Getting Arrested Alongside Citizen Journalists Gave Me a Taste of the Risks These Non-Professionals Take</i> , SALON (Sept. 28, 2011), http://www.salon.com/2011/09/28/wall_street_protest_arrested/ .

OCTOBER 2011

18	October 5	Baton (swing) Throw to ground	Video shows that an officer struck a protester with a one-handed baton swing while holding onto the protester's arm. Several more officers then ran in and threw the protester to the ground. It is unclear from the video whether the protester was resisting the officer or whether there was another cause for the baton use.	Video	TheThirdAlbum, <i>Occupy Wall Street "Peaceful Until Tonight" Oct 5, 2011</i> , YOUTUBE (Oct. 7, 2011), http://www.youtube.com/watch?v=BRKP EQLDZ7o (baton swing at 3:19, throw to ground at 3:23).
19	October 5	Baton (overarm swing) (≥ 9) Baton (hit) (stomach) (journalist)	A video news report shows that an officer took at least nine two-handed overarm swings at protesters with his baton. The officer appeared to connect on at least three swings, although the video does not clearly show the swings landing. A reporter stated in the news report that he "took a hit from a nightstick in the stomach." The video does not show the circumstances prior to the officer's baton use.	News agency report with video report	<i>Occupy Wall Street Arrests: Fox 5 Crew and Protesters Hit by Pepper Spray, Batons</i> , MyFoxNY (Oct. 5, 2011, 7:11 PM), http://www.myfoxny.com/story/17398216/occupy-wall-street-arrests-fox-5-crew-and-protesters-hit-by-pepper-spray-batons (allegation in video at 0:45).
			A second video shows that an officer took at least three two-handed overarm swings at protesters. Some of the protesters are holding cameras, and at least one protester had his hands in the air as if signaling the officer to stop. It is unclear whether the videos show the same incident.	Video	Bushonomics, <i>Occupy Wall Street Protesters Beaten</i> , YOUTUBE (Oct. 6, 2011), http://www.youtube.com/watch?v=INQkkWCnw00&list=UUZsEd2GAdaVubpNAAQI3c-Q&index=1&feature=plcp (baton swings at 0:01).
			One witness claimed that she "saw overhead swinging of batons—in all directions."	Research Team interview	Interview with community member who frequently attends OWS events (GGG22) (2012) (On October 5, "I saw overhead swinging of batons—in all directions.").
			Another witness also observed officers swinging batons.	Research Team interview	Interview with independent journalist and teacher (SSS88) (2012) (describing baton swinging in the evening).
20	October 5	Baton (one-handed swing x 2) (videographer)	Video shows that an officer took two one-handed swings with his baton. It appears that the officer also swung the baton a third time, although the officer's arm and baton are out of the viewing frame. The video appears to show that this officer was the same officer that took at least nine swings in Incident 19. The video also appears to show that an officer struck the man recording the video with a baton while simultaneously yelling, "back up!" The officer did not appear to give the videographer any time to comply before striking him.	Video	wearechange, <i>Luke Rudkowski Attacked by Police, Baton to the Gut at Occupy Wall Street Arrests</i> , YOUTUBE (Oct. 5, 2011), http://www.youtube.com/watch?v=-YXuvhg8Ahw (baton swings at 0:25, videographer hit at 0:45).

			A second video appears to show an officer hitting a protester with a one-handed baton swing. Although the circumstances prior to the swing are unknown, the protester appeared to be seated on the ground and did not appear to be threatening the officer. The actual contact is not clearly shown in the video. It is unclear whether this video is depicting part of the same incident.	Video	SurvivalWithBushcraf, <i>Police Brutality – Wall Street Protesters Maced, Punched, Kicked, Clubbed Oct. 5 2011 8:45 PM</i> , YOUTUBE (Oct. 6, 2011), http://www.youtube.com/watch?v=DVH2iS38JS4 (baton swing at 0:36).
21	October 5	Baton (jab) (stomach) (legal observer x 2)	A member of the Research Team, while legal observing, was jabbed in the stomach with a baton by an officer. Another legal observer was also jabbed at the same time.	Research Team observations	Witnessed by member of Research Team.
22	October 5	Pepper spray (multiple) Pepper spray (photographer)	Two journalists reported that “photographs from the scene showed an officer behind the barricade directing a stream of pepper spray at people trying to shove their way past.”	News report	Andy Newman & Colin Moynihan, <i>23 Arrested Wednesday in Wall St. Protest</i> , N.Y. TIMES (Oct. 6, 2011, 10:22 AM), http://cityroom.blogs.nytimes.com/2011/10/06/23-arrested-wednesday-in-wall-st-protest/ .
			A reporter stated in a video news report that “Fox 5 photographer Roy Isen got sprayed with mace” while covering the protests.	News agency report with video report	<i>Occupy Wall Street Arrests: Fox 5 Crew and Protesters Hit by Pepper Spray, Batons</i> , MYFOXNY (Oct. 5, 2011, 7:11 PM), http://www.myfoxny.com/story/17398216/occupy-wall-street-arrests-fox-5-crew-and-protesters-hit-by-pepper-spray-batons (allegation in video at 0:45).
			A second video shows an officer spraying pepper spray at least twice into a crowd of protesters and at least one journalist. It is unclear whether the video depicts the incident described in the news reports or a separate incident. It is also unclear whether the officer was a member of the Disorder Control Unit.	Video	<i>glassbeadian, Police Club, Pepper Spray #occupywallstreet Protestors @ Wall Street 10.05.11</i> , YOUTUBE (Oct. 5, 2011), http://www.youtube.com/watch?v=ELEBAGIool0 (pepper spray at 0:23).
			A third video also appears to show police spraying protesters with pepper spray, followed by shouts of “pepper spray!” from the crowd. It is unclear whether this video shows the same instance as the first video or the news reports, or whether it depicts a separate incident.	Video	<i>wearechange, Luke Rudkowski Attacked by Police, Baton to the Gut at Occupy Wall Street Arrests</i> , YOUTUBE (Oct. 5, 2011), http://www.youtube.com/watch?v=YXuvhg8Ahw (pepper spray at 0:16).

			Multiple witnesses stated that police used pepper spray on protesters on this date.	Research Team interviews	Interview GGG22 (community member who frequently attends OWS events and reports about them via social media) (On October 5, “[t]hey literally were just indiscriminately pepper spraying just anyone.”); Interview LLL66 (activist) (describing being pepper sprayed at the intersection of Broadway and Wall Street).
			Members of the Research Team witnessed what appeared to be after-effects of pepper spray usage, including protesters yelling out that pepper spray had been used and moving away from the alleged location of the spray.	Research Team observations	Witnessed by members of Research Team.
23	October 5	Pepper spray	Video shows that an officer sprayed multiple protesters with pepper spray. The video appears to show that the officer sprayed continuously for approximately eight seconds, pointing the spray at any protester who came near.	Video	SurvivalWithBushcraf, <i>Police Brutality – Wall Street Protesters Maced, Punched, Kicked, Clubbed Oct. 5 2011 8:45 PM</i> , YOUTUBE (Oct. 6, 2011), http://www.youtube.com/watch?v=DVH2iS38JS4 (pepper spray at 0:48).
24	October 5	Scooter (hit)	Video appears to show an officer’s scooter running into the legs of a protester. Prior to the contact, at least eight officers were driving down the street on scooters, honking their horns in an apparent attempt to move protesters onto the sidewalk. Most protesters moved to the sidewalk, but several, including the protester who appeared to be hit, were backing away from the scooters but remaining in the street.	Video	DacocoaProductions, <i>OccupyWallSt - NYPD Gone Wild 10-5-11 Part 1</i> , YOUTUBE (Oct. 5, 2011), http://www.youtube.com/watch?v=HznJZKgiELA (contact with scooter at 0:36).
25	October 14	Punch (head)	A journalist reported that an officer “grabbed a protester wearing a green shirt. Then the [officer] punched the man, knocking him to the ground.”	News report	Colin Moynihan, <i>For Commander Tied to Punching Incident, Evidence of a Blow Weeks Earlier</i> , N.Y. TIMES (Oct. 20, 2011, 12:53 PM), http://cityroom.blogs.nytimes.com/2011/10/20/for-commander-tied-to-punching-incident-evidence-of-a-blow-weeks-earlier/ .
			Video shows that the officer punched a protester in the head. The protester was backing away from the officer at the time of the punch and appeared to make a downward motion with his arm prior to the punch; the intent of this motion is unclear.	Video	ReasonTV, <i>NYPD Cop Punches Protester at Occupy Wall Street, 10/14/11</i> , YOUTUBE (Oct. 14, 2011), http://www.youtube.com/watch?v=JZcJ31g0ScQ&feature=related (punch at 1:41).

			In an interview, the protester stated that he did not provoke the officer. He also stated: "I was walking away from him, I was not walking toward him . . . I was going away. I didn't say anything [to the officer]."	Video interview	Dan Freed, <i>Protester Hit by Cop Tells His Story</i> , THESTREET (Oct. 14, 2011, 2:58 PM), http://www.thestreet.com/video/11278124/protester-hit-by-cop-tells-his-story.html (statements at 0:18 and 0:40).
26	October 14	Punch (shoulder) (journalist)	A journalist stated that, while taking video, he was struck in the shoulder without warning by a detective wearing a suit.	Journalist tweet	Tweet by Michael Tracey (Journalist), TWITTER (Oct. 14, 2011, 7:57 AM), https://twitter.com/mtracey/status/124816134380855296 (stating the allegation and linking to a picture of the detective allegedly responsible). <i>Note: Content and authorship of tweet confirmed to Research Team by Michael Tracey.</i>
			The journalist stated that the officer who struck him then repeatedly refused his requests for the officer's name.	Research Team interview	Interview with Michael Tracey (Journalist) (2012).
27	October 14	Grab (x 2) Push against wall Pull to ground	Video shows that a man was walking down the sidewalk next to a woman, being followed closely by an officer. The officer grabbed the man, pushed him against a wall, and held him there for approximately ten seconds. The woman tried to come closer to the officer, and a second officer grabbed her and held her back a short distance away. The first officer then pulled the man by his arms down to the ground.	Video	couchand, <i>Brutally Violent Arrest at Occupy Wall Street</i> , YOUTUBE (Oct. 14, 2011), http://www.youtube.com/watch?v=VcW5qf99vcA (grab at 0:05, push against wall at 0:08, pull to ground at 0:18).
28	October 14	Grab (legal observer) (resulted in bruised arms)	A legal observer claimed that an officer picked her up by her arms and moved her, resulting in bruised arms.	Research Team interview	Interview with legal observer (ZZZ11) (2012).
29	October 14	Scooter (legal observer) Drag (legal observer)	Video shows that an officer drove a scooter at a crowd of people, including journalists and legal observers. The video then shows a legal observer lying on the ground screaming, his foot under the scooter.	Video	Greenwichdiva, <i>Occupy Wall Street Protest March Marred By Video Appearing to Show NYPD Scooter Hit Man.mp4</i> , YOUTUBE (Oct. 14, 2011), http://www.youtube.com/watch?v=BGGuPV0bPR0 (officer driving scooter at 0:13, legal observer on ground and screaming at 0:20).
		Push into ground (legal observer) Baton	A second video shows the observer on the ground with his foot under the scooter.	Video	RussiaToday, <i>Video: 'Occupy Wall Street' NYPD 'Runs Over' Protester with Scooter</i> , YOUTUBE (Oct. 14, 2011), http://www.youtube.com/watch?v=cyyDjHy4S7Y (contact with scooter at 0:06).

		<p>(hold against neck) (legal observer)</p> <p>(resulted in facial lacerations)</p>	<p>Reported accounts differ over whether the observer's foot was in fact run over or trapped by the scooter.</p>	<p>News reports and journalist tweets</p>	<p><i>Compare</i> Tweet by C.S. Muncy (Photographer), TWITTER (Oct. 14, 2011, 10:48 AM), https://twitter.com/csmuncyphoto/status/124859153184342016 (“[p]hotographed a member of the Lawyer’s Guild getting run over by a scooter cop at the big #OWS rally this morning.”), and Matthew Lysiak et al., <i>Occupy Wall Street Protest March Marred by Video Appearing to Show NYPD Scooter Hit Man</i>, N.Y. DAILY NEWS (Oct. 14, 2011, 4:54 PM) (quoting a different legal observer as saying that the first legal observer “was run over by a police motorcycle” and that “[h]is leg was stuck under the bike”), with Andy Newman & Al Baker, <i>Pair of Police-Protester Incidents Adds Fuel to Occupy Wall St.</i>, N.Y. TIMES (Oct. 14, 2011, 2:24 PM), http://cityroom.blogs.nytimes.com/2011/10/14/video-of-protesters-leg-beneath-scooter-spurs-conflicting-accounts/ (quoting Paul J. Browne, Deputy Comm’r of Pub. Info., New York City Police Dep’t, as saying that the protester “claimed falsely he was trapped.”), and Matthew Lysiak et al., <i>supra</i> (quoting Joe Marino, photographer, N.Y. Daily News, as saying that “[t]he bike definitely hit him . . . [but] I saw him sticking his legs under the bike to make it appear he was run over.”).</p>
			<p>A third video shows that the observer kicked the scooter off or away from his leg, at which point officers dragged the observer several feet and began to cuff him. While he was being cuffed, an officer pushed the observer’s face into the pavement by pressing his baton across the back of the observer’s neck. The same video contains an interview with the observer’s legal counsel, who stated that the observer suffered facial lacerations and was hospitalized.</p>	<p>Video</p>	<p>LeakSourceArchive, <i>Occupy Wall Street: Interview with Lawyer Representing Protester Run Over by NYPD Motorcycle</i>, YOUTUBE (Oct. 15, 2011), http://www.youtube.com/watch?v=jWGSz-YwOkM (kicked scooter, drag, push into ground, and baton at 2:54; statement of observer’s injuries at 0:28).</p>
30	October 15	<p>Push</p> <p>Throw into air to ground</p>	<p>A member of the Research Team observed an officer push and then throw a male protester into the air for no apparent reason as he walked, with many other protesters, near parked police scooters. The protester fell hard to the ground and was not arrested.</p>	<p>Research Team observations</p>	<p>Witnessed by member of Research Team.</p>

31	October 15	Punch (x 3) (head)	Video shows that an officer punched a protester three times in the head while two other officers attempted to pull the protester away from a crowd, presumably to arrest him. The protester appeared to push an officer away before other officers began to pull him out of the crowd.	Video	dr3amstat3s, <i>Police and Protesters Clash @ Occupy Wall Street</i> , YouTube (Oct. 17, 2011), http://www.youtube.com/watch?v=500PmupLeY4&feature=related (punch at 0:49).
32	October 15	Push against wall (journalist)	A journalist stated that when he asked a non-uniformed officer for his name at a march, the officer pushed the journalist against a wall and held him there, threatening him that if he kept asking questions, he would get “his fucking ass beat.”	Research Team interview	Interview with Michael Tracey (Journalist) (2012).
			The journalist recorded interviews with two bystanders immediately after the incident. One bystander stated that he witnessed the officer using abusive language toward the journalist. He then told the journalist that the officer “put his chest in your face and pushed you around.” The other bystander told the journalist that the officer “[got] up in your face and [shouted] at you. He pressed you against the wall of the supermarket.”	Video	mtraceyvideos, <i>Eyewitnesses Describe the Violent Actions of NYPD Official</i> , YouTube (Oct. 17, 2011), http://www.youtube.com/watch?v=d5i8MzcnDd8&feature=channel_video_title (statements from witnesses beginning at 0:20).
33	October 15	Baton (overhead swing x 2)	Video shows an officer swinging his baton in a one-handed overhead swing at least two times into a crowd of protesters. It appeared that the officer was attempting to force protesters to release their grip on a metal barricade; police were attempting to move the barricade several feet over, and protesters appeared to grab onto it as it moved by them. The officer appeared to strike at protesters’ hands, after which police successfully moved the barricade away from the crowd. It is unclear whether the baton swings made contact with protesters.	Video	dr3amstat3s, <i>Police and Protesters Clash @ Occupy Wall Street</i> , YouTube (Oct. 17, 2011), http://www.youtube.com/watch?v=500PmupLeY4&feature=related (baton swings at 0:11).
			A witness stated that she observed an officer hitting a protester with an overhead baton swing. It is unclear whether the witness’s description is of the same incident or a separate one.	Research Team interview	Interview with credentialed journalist (XXX33) (2012) (stating that on October 15, “a cop took his baton overhead and hit a protester”).

			Another witness observed an officer bring his baton “down on someone so hard that he crumpled.” It is unclear whether the witness was describing the same incident or a separate one.	Research Team interview	Interview with legal observer (ZZZ11) (2012) (on October 15, witnessed an officer bring his nightstick “down on someone so hard that he crumpled.”).
34	October 15	Horses	CBS News reported that “[p]olice, some in riot gear and mounted on horses, tried to push [protesters] out of the square and onto the sidewalks in an attempt to funnel the crowds away.”	News report	<i>Thousands of Protesters Fill NYC’s Times Square</i> , CBS NEWS (Oct. 15, 2011, 4:59 PM), http://www.cbsnews.com/2100-201_162-20120944.html .
			Video shows that officers on horseback pushed a crowd of protesters back. One of the horses stumbled, nearly toppling its rider and coming within feet of the protesters as it regained its footing. Because only part of the horse’s stumble is within the viewing frame, it is unclear whether the horse came into contact with protesters before it came into view.	Video	dr3amstat3s, <i>Police and Protesters Clash @ Occupy Wall Street</i> , YOUTUBE (Oct. 17, 2011), http://www.youtube.com/watch?v=50OPmupLeY4&feature=related (horse stumble at 1:29).
			A journalist reported that at one point, “[a] mounted officer spurred his horse forward, ramming demonstrators, and the scene quickly descended into chaos.”	News report	Michael Tracey, <i>Why Did the NYPD Use Horses on Occupy Wall Street Protesters?</i> , NATION (Oct. 25, 2011), http://www.thenation.com/article/164167/why-did-nypd-use-horses-occupy-wall-street-protesters# .
			A witness who saw the incident described the NYPD’s use of horses as “reckless.”	Research Team interview	Interview with journalist (AAA88) (2012).
35	October 26	Punch (x 3)	Video appears to show that an officer punched an individual three times while the protester was on the ground (the actual contact is blocked from view). It is unclear from the video what circumstances preceded the punches.	Video	DacocoaProductions, <i>#OWS 10-26-11 City Hall to Union Square NYPD Part 4</i> , YOUTUBE (Oct. 27, 2011), http://www.youtube.com/watch?v=rNPB-vb34A0&feature=fvwrel (punches at 3:49).
36	October 26	Baton (overhead swing x 4) (shoulder)	Video shows that an officer swung a protester four times with one-handed overhead baton swings. Video clearly shows that at least one of the swings struck the protester in the right shoulder; the other swings also appeared to land on the protester’s shoulder, but are less clear. The officer appeared to be attempting to force the protester to release his grip on another protester, whom the police were trying to remove from the crowd.	Video	DacocoaProductions, <i>#OWS 10-26-11 City Hall to Union Square NYPD Part 4</i> , YOUTUBE (Oct. 27, 2011), http://www.youtube.com/watch?v=rNPB-vb34A0&feature=fvwrel (baton swings at 2:01).

37	October 26	Baton (overhead swing)	Video appears to show that an officer swung his baton at a protester with a one-handed overhead swing (the actual contact is blocked from view). The officer appeared to be attempting to keep other protesters away from the person he was holding down on the ground.	Video	DacocoaProductions, #OWS 10-26-11 City Hall to Union Square NYPD Part 4, YOUTUBE (Oct. 27, 2011), http://www.youtube.com/watch?v=rNPB-vb34A0&feature=fvwr (baton swing at 2:38).
NOVEMBER 2011					
38	November 15	Push to ground	A witness claimed that an officer pushed a female protester to the ground so hard that it looked "almost like he picked her up and threw her."	Research Team interview	Interview with Paula Segal (Lawyer) (2012).
39	November 15	Push (multiple) (journalist x 2)	Two journalists reported being pushed by police. One of the journalists was attempting to document an arrest at the time.	Journalist tweets	Tweet by Julie Shapiro (Journalist, DNAinfo.com), TWITTER (Nov. 15, 2:14 AM), https://twitter.com/julieshapiro/status/136341232812167168 ("Got shoved by an NYPD officer for the first time. Getting scary down here."); Tweet by Josh Harkinson (Journalist, Mother Jones Magazine), TWITTER (Nov. 15, 2011, 4:16 AM), https://twitter.com/JoshHarkinson/status/136371962011332608 ("Cops just violently shoved me away as I tried to shoot this man in a stretcher being loaded into ambulance twitpic.com/7efa2v").
			Another witness stated that police engaged in repeated pushing of protesters on this date.	Research Team interview	Interview with activist (OOO33) (2012) (stating general allegations that on November 15, police "kept shoving us [protesters] around on the sidewalks.").
40	November 15	Grab (journalist) Drag (journalist)	A letter sent to the NYPD by the New York Times and multiple other news organizations and advocacy groups alleged that, after announcing that credentialed press must "leave the park immediately or be subject to arrest," a Community Affairs officer "grabbed one newspaper photographer and dragged him from the park."	Letter from news organizations to NYPD	Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm'r of Pub. Info., N.Y.C. Police Dep't (Nov. 21, 2011), <i>available at</i> http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf .
41	November 15	Push against wall (legal observer)	A journalist reported that an officer shoved a legal observer, also a retired judge, against a wall after she demanded that the officer stop beating a protester.	News report	<i>You Want to Get Arrested, Lady? The Retired Judge Shoved Up Against a Wall and Threatened by NYPD at Occupy Wall Street Clashes</i> , MAILONLINE (Nov. 20, 2011, 10:53 AM), http://www.dailymail.co.uk/news/article-2063716/Occupy-Wall-Street-Retired-JUDGE-shoved-wall-threatened-NYPD.html .

			The legal observer described the incident in an interview: the officer “said, ‘Lady, do you want to get arrested?’ And I said, ‘Do you see my hat? I’m here as a legal observer.’ He said, ‘Do you want to get arrested?’ And he pushed me up against the wall.”	Video interview	<i>Former Seattle Police Chief Norm Stamper on Paramilitary Policing from WTO to Occupy Wall Street</i> , DEMOCRACY NOW! (Nov. 17, 2011), http://www.democracynow.org/2011/11/17/paramilitary_policing_of_occupy_wall_street (providing a video interview given by the legal observer who was allegedly pushed, stating what occurred at 41:05).
42	November 15	Tackle to ground	A civil complaint alleged that officers tackled City Council member Ydanis Rodriguez to the ground and struck him.	Civil complaint	Complaint at ¶ 508, <i>N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski</i> , 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389).
		Strike (resulted in gash over eye)	A journalist reported that the City Council member stated that the officer “threw his body in front of me and started hitting my head on the street . . . I was assaulted by NY police officers.” Neither the complaint nor the journalist report indicates whether officers used weapons.	News report	Cindy Y. Rodriguez, <i>Ydanis Rodriguez Arrested: New York City Council Member Hit and Arrested During Police Raid at Zuccotti Park</i> , HUFFINGTON POST (Nov. 15, 2011, 10:00 AM), http://www.huffingtonpost.com/2011/11/15/ydanis-rodriguez-arrested-hit-occupy-wall-street-raid_n_1094645.html .
			Another journalist reported that “when [the City Council member] emerged after 20 hours in custody, he had a gash over his eye that he says was the result of police brutality.”	News report	John Del Signore, <i>Charges Dropped Against Councilman Arrested And Roughed Up At Zuccotti Park Raid</i> , GOTHAMIST (Apr. 5, 2012, 1:43 PM), http://gothamist.com/2012/04/05/charges-dropped-against-councilman.php .
			The City Council member was initially charged with resisting arrest, but his charges were dropped. The City Council member stated that he “was acting legally as an observer, which is [his] right as an elected official.”	News report	<i>Charges Dropped Against Councilman Arrested at Occupy Wall Street</i> , CBS NEW YORK (Apr. 5, 2012, 8:37 AM), http://newyork.cbslocal.com/2012/04/05/charges-dropped-against-councilman-arrested-at-occupy-wall-street/ .
43	November 15	Push Throw to ground	A witness stated that he observed police throw a protester to the ground. The protester had previously been standing in the street, and the officers threw him to the ground after he was already on the sidewalk. In describing how the protester was thrown to the ground, the witness stated that the officers “threw his face into the ground.” Then, one officer held the protester down with his knee while another held his face against the ground and appeared to strike or punch the protester several times. The witness stated that he “saw the [officer’s] arm swinging,” but did not observe the contact.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

44	November 15	Push (multiple) Punch (face) Door slam on foot (x 5) Pepper spray Baton (hit)	A civil complaint stated several allegations of excessive force by officers against protester Michael Rivas: “pushing him repeatedly, punching him in the face, slamming a car door on his foot five times, and, after hand-cuffing him, spraying him with pepper spray and hitting him with a nightstick.”	Civil complaint	Complaint at ¶ 667, N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski, 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389).
45	November 15	Tackle to ground Strike (multiple)	A civil complaint alleged that officers tackled a protester, an Iraq war veteran, to the ground and struck him “repeatedly.” The complaint does not state where the protester was struck or whether it was with weapons. The alleged victim had allegedly attempted to pull a fellow protester away who was being “brutalized by police officers while he was on the ground, not resisting.”	Civil complaint	Complaint at ¶ 534, N.Y.C. Council Member Rodriguez v. Deputy Inspector Winski, 2012 WL 1470305 (S.D.N.Y.) (No. 1:12CV03389).
46	November 15	Choke-hold	A journalist reported that another reporter stated that she witnessed officers throwing a third reporter in a “choke-hold.” The witnessing reporter also stated that police were not discriminating between press and protesters.	News report	Brian Stelter & Al Baker, <i>Reporters Say Police Denied Access to Protest Site</i> , N.Y. TIMES (Nov. 15, 2011, 11:06 AM), http://mediadecoder.blogs.nytimes.com/2011/11/15/reporters-say-police-denied-access-to-protest-site/ .
47	November 15	Baton (hit) Pepper spray	A news organization reported that officers used batons and pepper spray on protesters who refused to leave Zuccotti Park and engaged in a soft lock, in which they “lock[ed] arms together in the middle of the park.” It is unclear whether the police’s use of weapons was justified.	News report	<i>Occupy Wall Street Evicted in Late Night Raid; Lawyers Secure Injunction to Reopen Zuccotti Park</i> , DEMOCRACY NOW! (Nov.. 15, 2011), http://www.democracynow.org/2011/11/15/occupy_wall_street_evicted_in_late .
			Two journalists reported that, after making an announcement to clear the park, police “began throwing out tents, cuffing occupiers and using pepper spray.”	News report	Lila Shapiro & Maxwell Strachan, <i>Occupy Wall Street: New York Police Department Evicts Protesters, Clears Zuccotti Park [Latest Updates]</i> , HUFFINGTON POST (Nov. 15, 2011, 5:59 AM), http://www.huffingtonpost.com/2011/11/15/zuccotti-park-cleared-occupy-wall-street_n_1094313.html .
48	November 15	Baton (hit) (head)	A legal observer stated that she witnessed officers striking an individual in the head with batons.	Research Team interview	Interview with legal observer (ZZZ11) (2012) (witnessing officers forming a perimeter and hitting a male individual in the head with batons on Broadway near Pine Street).

49	November 17	Hold upside down Push	A journalist stated that she witnessed eight officers approach a protester on the sidewalk and arrest him; in the process of doing so, they pushed him and held him upside down. The journalist stated that the protester was “dancing” when police ordered him to “get on the sidewalk.” The protester complied, and eight officers “came over” and “pick[ed] him out of the crowd.”	Research Team interview	Interview with credentialed journalist (XXX33) (2012).
50	November 17	Grab Pull to ground Drag	Video appears to show an officer grabbing or pushing a protester's backpack while she is in the street. The protester appears to move or be moved to a sidewalk. The officer pursued her, grabbed her backpack again, pulled her to the ground and dragged her back into the street. The officer also appeared to be pulling the protester by her hair while dragging her along the ground by her backpack.	Video	buzzvideo, <i>OWS Blockade Girl Pulled Off Sidewalk By Her Hair</i> , YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=K8X-xorFTSg&feature=player_embedded#! (pull to ground and drag at 0:02).
51	November 17	Punch (x 3) (head and shoulder)	Video shows that an officer punched a protester three times in the head and shoulder. At the time, the protester was in a soft lock, in which he linked arms with other protesters and sat in the street, and police were attempting to pull him away. The video shows that the officer tried to separate the protester several times by pulling him, but did not attempt any other methods before punching the protester.	Video	RTAmerica, <i>NYPD Blast LRAD Sonic Weapon Against OWS Protest</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=jKRQo dSK7dU&feature=youtu.be (punches at 1:08).
52	November 17	Grab Pull Choke	Video shows that an officer approached a woman from behind and grabbed her by the strap of her backpack and her scarf for no apparent reason. The officer began to pull the woman towards him, and other protesters began pulling the woman away from him. The officer pulled at the woman by the strap of her backpack for approximately fifteen seconds, and appeared to possibly be choking her via the strap or her scarf. The protesters eventually pulled the woman away from the officer, and police appeared not to take any further action.	Video	willgerrard, <i>#ows 11-17-11 Police Brutality @ Pine St. & William St.</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=PbeSfDbAAmI&feature=related (grab and pull at 0:13, apparent choking at 0:24).

53	November 17	Throw to ground Baton (jab) (multiple)	Video shows that, while attempting to pull a protester from a crowd, an officer threw another protester to the ground who was standing between police and their target. There is no discernible provocation shown in the video for the use of force. The video then shows another officer appearing to strike the apprehended protester several times with downward jabbing motions of his baton (the actual contact is blocked from view). The officers appeared to be struggling to pull the protester out of the crowd. It is unclear whether anything occurred prior to the events shown in the video that could have justified the use of force.	Video	yesmenmedia, <i>NYPD Officer #2886 Beats OWS Protester (17.11.2011)</i> , YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=O1TXFal5_XQ&feature=related (throw to ground at 0:01, baton jabs at 0:09).
54	November 17	Baton (overhead swing x 3)	Video appears to show an officer striking a protester with three one-handed overhead baton swings, although the protester is surrounded by officers and the contact is blocked from view.	Video	OccupyTVNY, <i>NYPD Crashes Dance Party - N17 / Occupy Wall Street Video</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=xFIpAqZJGYQ&feature=related (baton swings at 0:46 and shown again in slow-motion at 1:04).
			A witness also stated that he observed an officer swinging down at a protester with an overhead swing of his baton; it is unclear whether the witness is referring to the same incident as the video.	Research Team interview	Interview with protester (NNN44) (2012) (stating that on November 17, a “police officer raised his arm over his head and swung down” at a protester).
			A journalist reported more general allegations of baton use by police, stating that on November 17, “officers swung batons at protesters who crowded the streets.” A photograph included in the journalist’s article shows a police officer with his baton raised, as if about to strike into a crowd of protesters. It is unclear whether the report and the photo depict the same incident as the video or a separate one.	News report	Andy Newman, <i>Clashes and More Than 240 Arrests on Protest’s ‘Day of Action’</i> , N.Y. TIMES (Nov. 17, 2011, 8:13 AM), http://cityroom.blogs.nytimes.com/2011/11/17/protesters-and-officers-clash-near-wall-street/?ref=occupywallstreet (reporting that police used batons on protesters and providing a link to a photo gallery, in which the ninth picture shows an officer with baton raised).

55	November 17	Baton (hit) (shoulder) (journalist)	A reporter stated in a video interview that an officer struck her in the arm with a baton while she was wearing a “clearly marked” press pass. The reporter was attempting to film police as they were pushing a barricade into protesters. She stated: “[A]s I approached the crowd, a police officer yelled at me to get away and before I had a chance to react, he swung his baton and hit me here in the shoulder. It wasn’t that intense, but it was just a shock.”	Video interview	RTAmerica, <i>NYPD Blast LRAD Sonic Weapon Against OWS Protest</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=jKRQo dSK7dU&feature=youtu.be (allegations at 1:41).
56	November 17	Push (photo-grapher)	A reporter stated in a video interview that police pushed a photographer.	Video interview	RTAmerica, <i>NYPD Blast LRAD Sonic Weapon Against OWS Protest</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=jKRQo dSK7dU&feature=youtu.be (allegation at 2:03).
57	November 17	Push against wall (journalist)	A reporter stated in a video interview that another reporter was “slammed against a wall and taken away in handcuffs.”	Video interview	RTAmerica, <i>NYPD Blast LRAD Sonic Weapon Against OWS Protest</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=jKRQo dSK7dU&feature=youtu.be (allegation at 2:05).
58	November 17	Baton (hit) (leg) (live-streamer)	A witness stated that an officer struck a livestreaming videographer in the leg with a baton while the livestreamer was taking photographs.	Research Team interview	Interview with livestreamer (497AB) (2012).
59	November 17	Push to ground (journalist)	Video appears to show that police pushed a woman onto the hood of a car. The woman then fell to the ground and did not get up for several seconds. When she got up, the woman was holding a microphone; the video’s caption states that the woman is a “news reporter.”	Video	RestoreLiberty2012, <i>Occupy Wall Street – Female Reporter Violently Shoved Into Taxi – Nov. 17</i> , YouTube (Nov. 20, 2011), http://www.youtube.com/watch?v=KEjVs LG4GA8 (push onto car at 0:06).
			A news report provides a video of the same incident from another angle and identifies the individual who was pushed as a reporter for the Daily Caller.	News report	<i>Chaos in the City: NYPD Manhandles Daily Caller Video Reporter During ‘Occupy’ Protest [Video]</i> , DAILY CALLER (Nov. 18, 2011, 1:47 AM), http://dailycaller.com/2011/11/18/chaos-in-the-city-nypd-manhandles-daily-caller-video-reporter-during-occupy-protest-video/#oid=FidXkwMzpJHYEEPzTkbC7NcJmEY6rW4X (push to ground at 0:24).

60	November 17	Grab Pull to ground Flex-cuffs (tight)	Video appears to show that an officer pulled a woman to the ground (the video only partially shows the woman falling to the ground). Several seconds later, the video shows police putting flex-cuffs on a woman who is face-down on the ground; it is unclear whether this woman is the same one who was pulled to the ground. The person filming the video can clearly be heard shouting “she’s a journalist!” several times. Video then shows the woman against a wall with flex-cuffs on her wrists. She says to the person filming, “look at the cuffs, look how fucking tight they have these cuffs on me.” Video appears to show that there may be some discoloration in the woman’s hands. The video’s caption identifies the woman as a journalist and radio host and states that “she was indiscriminately grabbed from the crowd while moving away from the chaos, as instructed to do by NYPD. . . a police officer rush[ed] her from behind and body slam[med] her to the pavement.”	Video	TheShamarReoprt, <i>Journalist, Faith Laugier - Attacked, Assaulted and Arrested by NYPD: The Shamar Report</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=00CLssMbc-k (alleged grab and throw to ground at 0:07).
61	November 17	Grab (photographer) Throw to ground (photographer)	A letter sent to the NYPD by the New York Times and multiple other news organizations and advocacy groups alleged that an officer grabbed and threw a photographer to the ground, causing her to “hit[] her head on the pavement.” The photographer had proper credentials that were “clearly visible.” The incident occurred after two other officers gave the photographer conflicting instructions on where to walk.	Letter from news organizations to NYPD	Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), <i>available at</i> http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf .
62	November 17	Push to ground (journalist) Pull off ground (journalist) (resulted in hospital visit)	A letter sent to the NYPD by the New York Times and multiple other news organizations and advocacy groups alleged that an officer pushed a journalist, wearing visible press credentials, “with both his arms, forcing the reporter to fall backwards, landing on her right elbow.” The officer then “proceeded to pick her up by her collar while yelling ‘stop pretending.’ The reporter went to [a hospital] for treatment of her injuries.”	Letter from news organizations to NYPD	Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), <i>available at</i> http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf .

63	November 17	Pull Baton (overhead jab x 2)	Video shows that an officer pulled a protester forward from a crowd; the reason for pulling him is unclear. The officer, accompanied by another officer, then attempted to pull the protester further forward by his shirt and arm, but the protester appeared to hold himself in place by holding onto a pole. A third officer approached the protester from behind and, without apparent warning, appeared to strike him twice with two downward jabs of his baton. The baton-wielding officer then pushed the protester forward until he released his grip on the pole, at which point officers placed him under arrest.	Video	AMV0530, <i>OWS-Police Brutality - NYPD - NOV 17</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=rOG4ZvaspCc&feature=related (pull at 1:03, baton jabs at 1:16).
			Two other videos also show that the third officer made a downward jabbing motion with his baton in the direction of the protester, although the actual contact is blocked from view in all of the videos.	Videos	spendnysf, <i>Occupy Wall Street Day of Action Protest Baton Beating</i> , YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=R4nJ9gd1CW4 (baton jabs at 0:14); Clarknt87, <i>Occupy Wall Street #n17</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=aq0uF79_IK4&feature=player_embedded#! (baton jabs at 1:19).
64	November 17	Baton (overhead swing x 6)	Video shows two officers taking at least six one-handed overhead baton swings into a crowd of protesters. The officers appeared to be attempting to apprehend a protester who was being pulled back into the crowd by other protesters. The baton swings appeared to be aimed at forcing the protesters in the crowd to release the first protester.	Video	DoccupyWallStreet, <i>Police Violence and Batons 11/17/11 (Violence @ 0:45)</i> , YOUTUBE (Nov. 17, 2011), http://www.youtube.com/watch?v=xZH3zOsGV-M (baton swings at 0:51).
65	November 17	Barricade (push)	Video shows several police officers holding a metal barricade and driving it into a crowd of protesters. Police appeared to be attempting to drive protesters out of the street.	Video	threadsofprogress, <i>NYPD Push Barricade into OWS Protesters-November, 17th, 2011</i> , YOUTUBE (Nov. 21, 2011), http://www.youtube.com/watch?v=rXbhOdwShM4 (barricade at 0:12).
			A lawyer present at the protest stated that she saw “officers pick up a barricade and use it to push people.” It is unclear whether the lawyer is speaking of the same incident shown in the above video.	Research Team interview	Interview with Paula Segal (Lawyer) (2012).

66	November 17	Barricade (strike) (multiple) (photographer)	A letter sent to the NYPD by the New York Times and multiple other news organizations and advocacy groups alleged that two officers struck a photographer “in the chest, knees and shin” with a metal barricade as he was attempting to take pictures of a bloodied protester being arrested.	Letter	Letter from George Freeman, Vice President & Asst. Gen. Counsel, N.Y. Times Co., et al., to Paul J. Browne, Deputy Comm’r of Pub. Info., N.Y.C. Police Dep’t (Nov. 21, 2011), <i>available at</i> http://www.nyclu.org/files/releases/DCPI%20Letter%20-%20Signed%2011-21-11.pdf .
67	November 30	Scooter (hit x 2)	A protester stated that an officer hit her twice with his scooter while the protester was participating in a march.	Protester tweet	Tweet by @DaynaR, TWITTER (Nov. 30, 2011, 7:47 PM), https://twitter.com/daynar/status/142042203412365313 (“[a]lso, the officer driving motorbike 257 hit me with his slow-moving, completely harmless vehicle twice while we were marching up Broadway.”). <i>Note: Content and authorship of tweet confirmed to Research Team by @DaynaR.</i>
DECEMBER 2011					
68	December 12	Push to ground	A journalist reported, based on a conversation with a protester, that the protester was pushed from behind and was “sent sprawling” while he was walking toward an exit after police had ordered protesters to leave the World Financial Center’s Winter Garden. The protester stated that he “was thrown to the ground” and that he “couldn’t believe [he] was being hurled with such force.”	News report	Colin Moynihan, <i>Brookfield Deals with Protesters Again, but Not at Zuccotti</i> , N.Y. TIMES (Dec. 12, 2011, 1:15 PM), http://cityroom.blogs.nytimes.com/2011/12/12/brookfield-deals-with-protesters-again-but-not-at-zuccotti/?smid=tw-nytmetro&seid=auto .
69	December 12	Throw to ground (journalist)	A journalist stated that he was taking video of the police arresting protesters when an officer asked him if he had press credentials and then threw him to the ground and arrested him.	Video interview	BreakThruRadioTV, <i>OWS Arrest: John Knefel - BreakThruRadioTV [ep9]</i> , YOUTUBE (Dec. 16, 2011), http://www.youtube.com/watch?v=IHuhWOuOqsw (allegation at 1:38).
			A relative of the journalist stated that she saw him “standing near the crowd, taking video, . . . when [she] looked back in his direction, [she] saw his blue hood on the ground. [She] ran toward him . . . [He] was face down on the ground being handcuffed, his glasses flung across the floor and people screaming, ‘Stop, stop, he didn’t do anything!’”	News report	Molly Knefel, <i>Busted for Tweeting</i> , SALON (Dec. 13, 2011, 9:02 AM), http://www.salon.com/writer/molly_knefel/ .

70	December 17	Punch (temple) (resulted in swelling, bleeding, bruising, dizzy spells, and nausea)	A protester stated that an officer punched him in the left temple without provocation. He stated that the punch led to swelling, bleeding, bruising, dizzy spells, and nausea, and that he sought emergency medical treatment.	Research Team interview	Interview with protester (ZZY99) (2012).
71	December 17	Punch (kidney) (x 3) (videographer)	A journalist stated that he witnessed his "colleague, a credentialed cameraman," get "punched in the kidney three times."	Journalist tweets	Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 3:58 PM), https://twitter.com/rdevro/status/148145075015254016 ("My colleague, a credentialed cameraman, was punched in the kidney three times. #D17 #ows"). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux. Content of tweet also confirmed to Research Team by videographer who was punched.</i>
			The same journalist stated on March 18 that he saw the same officer who punched the cameraman.	Journalist tweet	Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Mar. 18, 2011, 12:53 AM), https://twitter.com/rdevro/status/181241913809190913 ("The sergeant who throw [sic] the girl is the same one that punched my cameraman and told me he "didn't give a fuck" about my press pass. #m17"). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.</i> <i>Note: The comment allegedly made by the officer in the tweet refers to a separate incident.</i>
72	December 17	Push to ground	A protester stated that he was standing on the sidewalk when he heard an officer tell him to get back. The protester told the officer that he didn't want to back into the street because he feared he would be arrested. He stated that the officer then pushed him in the chest with both hands, causing him to fall to the ground.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).
			Video confirms that an officer moved toward the protester and appeared to have her arms outstretched. The video also shows that the protester fell to the ground, and appears to show that he fell from the edge of the sidewalk onto the street. The actual contact is not shown on the video.	Video	Brent McDonald, <i>Occupiers' 'Think Tank' Soldiers On, Nonconfrontationally</i> , N.Y. TIMES (Feb. 1, 2012, 6:56 AM), http://cityroom.blogs.nytimes.com/2012/02/01/occupiers-think-tank-soldiers-on-nonconfrontationally (providing video that shows the push to ground at 3:41).

			A second video shows that the officer told the protester to move back several times and that the protester responded that he would then end up in the street; the officer then moved toward the protester, who is seen several seconds later on the ground. The actual contact is not shown on the video.	Video	skippyoe, <i>Duarte Park</i> , YouTube (Dec. 17, 2011), http://www.youtube.com/watch?v=dEAVWybtwaI (push to ground at 0:31).
73	December 17	Grab (journalist) Push into other protesters (journalist) Fist in neck (journalist)	A journalist for The Guardian wearing a press ID stated that an officer grabbed him and “push[ed] his fist into [his] throat” despite the journalist’s cries that he was press. The journalist shared a photograph of the officer allegedly responsible with the Research Team.	Journalist tweets	Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:49 PM), https://twitter.com/rdevro/status/148142787035004928 (“I was just manhandled by massive police officer. I was standing on the sidewalk. He was pushing his fist into my throat. #D17 #ows”); Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:53 PM), https://twitter.com/rdevro/status/148143806640959488 (“I repeatedly said I was trying to get back and he wouldn’t let me go. Eventually he pulled me away to arrest me. I kept telling I was press.”); Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Dec. 17, 2011, 12:55 PM), https://twitter.com/rdevro/status/148144387212324865 (“My neck is red, my press pass was ripped. I was doing nothing but standing on the sidewalk doing my job. #D17 #ows”). <i>Note: Content and authorship of tweets confirmed to Research Team by Ryan Devereaux.</i>
			A New York Times journalist, upon speaking with the Guardian journalist, stated that the officer used the Guardian journalist as a “de facto battering ram to push back protesters.”	News report	Michael Powell, <i>The Rules on News Coverage Are Clear, but the Police Keep Pushing</i> , N.Y. TIMES (Jan. 2, 2012), http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html .
74	December 17	Push	A protester stated that officers pushed him extremely hard while he was “on the sidewalk, onlooking, in the crowd” as other protesters entered a vacant lot.	Research Team interview	Interview with protester (ZZY99) (2012).
75	December 17	Push (x 2) (video-grapher)	Video shows that an officer twice shoved a Democracy Now! cameraman holding a camera.	Video	carlosmandelbaum, <i>Occupy Wall Street #D17 Police Violate Constitution and Lose 12/17/11</i> , YouTube (Dec. 18, 2011), http://www.youtube.com/watch?v=isiJpkBvmYk&feature=related (pushes at 3:10).

76	December 17	Tackle Throw to ground Push (x 2)	The Associated Press reported that officers tackled “at least two people in the street.” It is unclear from the report what circumstances may have existed to justify the tackling.	News report	<i>NYC Occupy Protesters Scale Fence at Vacant Lot</i> , CBS NEWS (Dec. 17, 2011, 6:46 PM), http://www.cbsnews.com/8301-201_162-57344710/nyc-occupy-protesters-scale-fence-at-vacant-lot/ (reporting that “[p]olice began making arrests, tackling at least two people in the street and handcuffing them”).
			Video shows officers tackling one protester and throwing another to the ground; one protester appeared to use a megaphone just before being tackled, and the other appeared to attempt to grab the megaphone off the ground just before being thrown. The video also shows two officers pushing protesters.	Video	sneekos, <i>#D17 Police Violence – 7th Ave and 34th St – Occupy Wall St</i> , YOUTUBE (Dec. 17, 2011), http://www.youtube.com/watch?v=ue9qDLXSYoI&feature=plcp (tackle at 0:09, throw to ground at 0:18, pushes at 2:03 and 2:23).
			A witness stated that she saw an officer grab a protester and throw him to the ground. It is unclear whether the witness is describing the same incident as is depicted in the above video.	Research Team interview	Interview with protester (OOO33) (2012).
77	December 31	Pepper spray (x 2)	Video shows that two officers sprayed a crowd with pepper spray from behind a metal barricade being pushed or pulled by both police and protesters at Zuccotti Park. Shortly after, an unknown substance appears to be sprayed or thrown back across the barricade in the direction of the police. It is unclear whether the officers who used the pepper spray were members of the Disorder Control Unit.	Video	OccupyVictoryMT, <i>Occupy Wall St & NYPD New Year's Eve Barricade Struggle Excerpt</i> , YOUTUBE (Jan. 1, 2012) http://www.youtube.com/watch?v=5eME7YDW930 (pepper spray at 0:52 and 0:58, protester spraying back at 0:53).
			A second video appears to show one of the same two officers spraying pepper spray again a few seconds after the spraying of the unknown substance.	Video	Blazedroots, <i>NYPD Gets Pepper Sprayed</i> , YOUTUBE (Feb. 19, 2012), http://www.youtube.com/watch?v=RjONPcdS4HY&feature=youtube_gdata_player (pepper spray at 0:04, protester spraying back at 0:05).
			The pepper spray use appeared to be intended to disperse protesters and others in the area. It impacted a large group of people, including protesters, legal observers, bystanders, and police, who began coughing and complaining of a burning sensation. Police offered no medical assistance; Occupy medics assisted those who needed their eyes flushed.	Research Team observations	Witnessed by member of Research Team.

			In a third video, a livestreamer commented that “pepper spray has been sprayed” and “the police have used pepper spray just now.”	Video	Timcast, <i>Timcast Recorded Live on 12/31/11 at 10:38 PM</i> , USTREAM (Dec. 31, 2011, 10:38 PM), http://www.ustream.tv/recorded/19502443 (statements at 20:38, 21:10).
			A journalist reported that “at least one officer fired an arch of pepper spray into the crowd behind [the] barricades.”	News report	Colin Moynihan and Elizabeth Harris, <i>Surging Back into Zuccotti Park, Protesters Are Cleared by Police</i> , N.Y. TIMES (Dec. 31, 2011, 9:58 PM), http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion (last updated Jan. 1, 2012, 2:10 AM).
78	December 31	Throw to ground Pin to ground	Two journalists reported that “several officers” threw a man to the ground and pinned him down. The incident occurred just after police used pepper spray and “plow[ed] directly into a crowd of people” in reaction to protesters removing metal barricades from the perimeter of Zuccotti Park.	News report	Colin Moynihan and Elizabeth Harris, <i>Surging Back into Zuccotti Park, Protesters Are Cleared by Police</i> , N.Y. TIMES (Dec. 31, 2011, 9:58 PM), http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion (last updated Jan. 1, 2012, 2:10 AM) (“[o]ne man was thrown down and pinned to the ground by several officers.”).
JANUARY 2012					
79	December 31 – January 1	Push against wall (photographer)	A credentialed photographer stated that an officer pushed her against a wall without warning, even though her NYPD press pass was clearly visible. The photographer stated that the officer told her she was under arrest, and replied that he didn’t care when she told him that she was press. She was released after yelling several times that she was press.	Research Team interview	Interview with credentialed journalist (XXX33) (2012).
80	December 31 – January 1	Throw (photographer)	A credentialed photographer witnessed another photographer being “thrown” by police.	Research Team interview	Interview with credentialed journalist (XXX33) (2012).
81	December 31 – January 1	Push (multiple) (journalist)	A journalist for the New York Times reported that an officer “began pushing” another Times reporter. The journalist stated that “[a]fter the reporter asked the captain to stop, another officer threatened to yank away his police press pass.”	News report	Michael Powell, <i>The Rules on News Coverage Are Clear, but the Police Keep Pushing</i> , N.Y. TIMES (Jan. 2, 2012), http://www.nytimes.com/2012/01/03/nyregion/at-wall-street-protests-clash-of-reporting-and-policing.html .
			Two other journalists for the New York Times reported that “one officer used two hands to repeatedly shove backwards a credentialed news photographer who was preparing to document an arrest.” It is unclear whether this report pertains to the same incident as the previous report.	News report	Colin Moynihan & Elizabeth Harris, <i>Surging Back into Zuccotti Park, Protesters Are Cleared by Police</i> , N.Y. TIMES (Dec. 31, 2011, 9:58 PM), http://cityroom.blogs.nytimes.com/2011/12/31/protesters-surge-back-into-zuccotti-park/?ref=nyregion (last updated Jan. 1, 2012, 2:10 AM).

82	December 31 – January 1	Grab (live-streamer) Push (multiple) (live-streamer)	A livestream videographer stated that he was grabbed by the wrist and shoulder and pushed multiple times while trapped in a kettle. The livestreamer also stated that he suffered from a sore wrist for several days afterward.	Research Team interview	Interview with livestreamer (497AB) (2012).
83	December 31 – January 1	Grab Throw to ground	A protester stated that he witnessed an officer grab a protester and throw him to the ground.	Research Team interview	Interview with protester (ZZY99) (2012).
84	December 31 – January 1	Push (legal observer)	A legal observer stated that on officer pushed him in the chest, out of Zuccotti Park.	Research Team interview	Interview with Dan Shockley (Legal Observer) (2012).
85	December 31 – January 1	Grab (legal observer) Throw onto car (legal observer)	Lawyers representing a legal observer stated that eight officers “charged toward [the legal observer], forcing his upper body onto the hood of a parked car, where they roughly grabbed [his] arms and forced them high behind his back” Before the incident, the legal observer had been recording the names of arrestees as they were led to a police van. At the time when he was arrested, the legal observer was speaking on his cell phone. The district attorney declined to prosecute the legal observer (who had been charged with disorderly conduct).	Civil complaint	Complaint at ¶¶ 28-33, 37, <i>Damian Treffs v. City of New York</i> , No. 12-CV-3030 (S.D.N.Y. filed Apr. 17, 2012).
			Video confirms that the legal observer was speaking on the phone when an officer approached him. The legal observer walked toward the sidewalk, but the officer grabbed him and pushed him onto the hood of a parked car. Three other officers then came over and helped the officer cuff the legal observer. At one point, eight officers surrounded the legal observer.	News report with video	Christopher Robbins, <i>Legal Observer Sues City After Bogus NYPD Arrest</i> , GOTHAMIST (Apr. 17, 2012, 3:06 PM), http://gothamist.com/2012/04/17/legal_observer_sues_city_after_bogu.php (providing a video recorded by Tim Pool; push against car at 10:25).
86	December 31 – January 1	Punch (face) (resulted in bruised face and bloodied mouth)	A journalist stated that he witnessed a protester get “punched in the face as he was arrested. Police said, ‘Stop resisting.’”	Journalist tweet	Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Jan. 1, 2012, 2:15 AM), https://twitter.com/rdevro/status/153373642519097344 (“I watched this protester, i I [sic] Anthony got punched in the face as he was arrested. Police said, ‘Stop resisting.’” #ows pic.twitter.com/UAHB2J0Q”). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.</i>

			The journalist sent a photograph of the protester to the Research Team; the protester appears to have a bruise near his right eye and a bloodied lip or gums.	Photograph	Photograph from Ryan Devereaux, Journalist, The Guardian, to Research Team (July 18, 2012) (on file with Research Team).
			A member of the Research Team recorded video documenting the protester's injuries.	Video	Video on file with Research Team.
87	December 31 – January 1	Barricade (multiple) (push)	Video appears to show that police lifted metal barricades and used them to push back the protesters, although it is unclear whether protesters were also attempting to pull the barricades away from police.	Video	OccupyVictoryMT, <i>Occupy Wall St & NYPD New Year's Eve Barricade Struggle Excerpt</i> , YOUTUBE (Jan. 1, 2012) http://www.youtube.com/watch?v=5eME7YDW930 (barricades at 0:12 and 0:43).
			A witness stated that "[p]olice were picking up barricades to push people with."	Research Team interview	Interview with community member who frequently attends OWS events (GGG22) (2012).
88	December 31 – January 1	Barricade (lift into face)	Video shows that an officer lifted a metal barricade with both hands, causing it to move up in the direction of a protester's face. The video appears to show that the protester was struck in the face by the top bar of the barricade; however, the protester disappeared from view immediately after the incident.	Video	joonipur, <i>OWS – New Year's Eve – Police Bashes Protester in the Face with Metal Barricade</i> , YOUTUBE (Jan. 1, 2012), http://www.youtube.com/watch?v=rR4Wea8dYTg (lift and strike at 0:56).
89	January 29	Push to ground (legal observer) (resulted in 5-6 inch bruise)	A legal observer stated that while trying to document an arrest, she was pushed by an officer so hard that she "went in the air, flew backwards, and fell." The observer suffered a large (5-6 inches wide, 2-3 inches high) bruise and sought medical attention.	Research Team interview	Interview with legal observer (ZZZ11) (2012) (explaining the incident and showing the Research Team photographs of her injury).
90	January 29	Baton (swing) (multiple)	A journalist witnessed the police "indiscriminately swinging" batons at people who were marching in the street.	Research Team interview	Interview with independent journalist and teacher (SSS88) (2012).
MARCH 2012					
91	March 17	Punch (multiple)	A journalist stated that a witness told him that police punched an individual "in the head 10-15 times while subdued."	Journalist tweet	Tweet by Ryan Devereaux, TWITTER (Mar. 17, 2012, 2:57 PM), https://twitter.com/rdevro/status/181092002623012864 ("Sounds like there were btwn 4-6 arrests on sidewalk. Witness says he saw one arrestee punched in the head 10-15 times while subdued. #m17"). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.</i>

92	March 17	Push (photo-grapher)	Video shows that an officer pushed a photographer, who was holding a camera and appeared to be wearing a press pass, several times as the photographer attempted to document another arrest.	Video	wearechange, <i>OWS Afternoon Arrests – 6 Month Anniversary – Raw Footage</i> , YOUTUBE (Mar. 18, 2011), http://www.youtube.com/watch?v=okkXZBXpHvU&feature=plcp (pushes at 7:07).
93	March 17	Grab Mask (rip off face) Push to ground	Video shows that an officer grabbed a protester out of the arms of another officer, who appeared to be walking him toward a different group of police. The protester appeared to attempt to keep his right arm free to hold a camera in the air. Approximately six other officers then surrounded the protester, grabbed at his head and arms, ripped the mask off his face and pushed him to the ground.	Video	wearechange, <i>OWS Afternoon Arrests – 6 Month Anniversary – Raw Footage</i> , YOUTUBE (Mar. 18, 2011), http://www.youtube.com/watch?v=okkXZBXpHvU&feature=plcp (grab at 4:11, mask rip at 4:18, push to ground at 4:25).
94	March 17	Grab (throat) Push (head)	A journalist reported that an officer grabbed a protester “by the bottom of her throat and shoved her head against the hood of a car,” and that another officer then “forcefully pressed her head against the car.”	News report	Colin Moynihan, <i>Scores Arrested as the Police Clear Zuccotti Park</i> , N.Y. TIMES (Mar. 17, 2012), http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/ .
95	March 17	Push	A journalist reported that one protester was “pushed . . . several hundred feet” and that an officer “briefly detained him.” The journalist reported that the protester told him that he had been counting the number of officers present and that the detaining officer asked him if he had any criminal or terrorism-related intentions.	News report	Colin Moynihan, <i>Scores Arrested as the Police Clear Zuccotti Park</i> , N.Y. TIMES (Mar. 17, 2012), http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/ .
96	March 17	Push	A journalist reported that a man told him that the police pushed him away while the man was videotaping an officer interrogating a protester.	News report	Colin Moynihan, <i>Scores Arrested as the Police Clear Zuccotti Park</i> , N.Y. TIMES (Mar. 17, 2012), http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/ .
97	March 17	Scooter	A protester stated that an officer revved his scooter forward as she and her son were crossing the street. The officer narrowly missed hitting the protester’s son.	Research Team interview	Interview with protester (RRR99) (2012).

98	March 17	Stomp	A journalist stated that an individual was “arrested and stomped by the police” after standing on a ledge. The journalist later stated that this allegation was supported by two eyewitnesses.	Journalist tweet	Tweet by Ryan Devereaux, TWITTER (Mar. 17, 2012, 4:37 PM), https://twitter.com/rdevro/status/181117104328687616 (“A former Marine who stood on ledge saluting and holding a Bible was just arrested and stomped by the police. #m17”); Tweet by Ryan Devereaux, TWITTER (Mar. 17, 2012, 5:08 PM), https://twitter.com/rdevro/status/181124766017650688 (stating that the allegation was true “. . . [a]ccording to two credible people who say they saw it with their own eyes.”). <i>Note: Content and authorship of tweets confirmed to Research Team by Ryan Devereaux.</i>
			Another journalist also stated general allegations that “people were stomped on” on this date.	Research Team interview	Interview with J.A. Myerson (Journalist) (2012).
99	March 17	Megaphone (strike) (head)	A journalist reported that a photographer stated that an officer struck a protester with his megaphone.	News report	Nick Pinto, <i>For Occupy Wall Street, A Day of Re-occupation, Re-eviction, And a Lot of Violent Arrests</i> , VILLAGE VOICE (Mar. 18, 2012), http://blogs.villagevoice.com/runninscared/2012/03/for_occupy_wall.php (reporting that “C.S. Muncy, who photographed the arrest, described a police officer smashing his megaphone into the back of the man's head,” and providing a picture of the alleged strike).
			The photographer told the journalist that the officer “smashed his megaphone into the back of the kid’s head.”	Journalist tweet	Tweet by Nick Pinto (Journalist, Village Voice), TWITTER (Mar. 17, 2012, 8:54 PM), https://twitter.com/macfathom/status/181242024475889664 (“@csmuncyphoto says he has shots of that Crosby Street arrest. ‘The cop smashed his megaphone into the back of the kid's head.’”). <i>Note: Content and authorship of tweet confirmed to Research Team by Nick Pinto and C.S. Muncy.</i>
100	March 17	Grab (journalist) Throw (journalist)	A journalist reported that she was “thrown out” of Zuccotti Park by police, who took her “by [her] arms.”	Journalist tweet	Tweet by Laurie Penny (Journalist), TWITTER (Mar. 17, 2012, 11:36 PM), https://twitter.com/PennyRed/status/181222512850513921 (“Zucotti [sic] full of police- I came back and got thrown out by my arms. Got back in. Hundreds of nypd here. #ows”).
101	March 17 - 18	Baton (jab) (multiple)	A protester stated that she witnessed police jabbing handcuffed protesters with batons.	Research Team interview	Interview with protester (QQQ11) (2012).

102	March 17 - 18	Baton (hit) (neck) Push	A journalist reported that a protester “said that officers pushed him in several directions and that as he tried to walk away, he was struck from behind in the neck. ‘One of the police ran and hit me with a baton,’ he said.”	News report	Colin Moynihan, <i>Scores Arrested as the Police Clear Zuccotti Park</i> , N.Y. TIMES (Mar. 17, 2012) http://cityroom.blogs.nytimes.com/2012/03/17/arrests-made-as-protesters-mark-occupy-wall-streets-six-month-anniversary/ .
103	March 17 - 18	Throw to ground (photo-grapher) Baton (hit x 2) (back & head) (photo-grapher)	A journalist reported that officers threw down and beat a photographer with batons, even after he had shown his press pass. The journalist reported that the photographer “yelled several times, ‘I’m PRESS! PRESS!’ yet was slammed on the head [with a baton] twice after he’d been thrown to the ground when the police shoved back the protesters.” In the same report, the photographer stated: “there was another push from the police – they saw me fall Just didn’t care. . . . Then came the batons. I couldn’t see if the people that were on top of me previously got hit at all but I certainly did, twice to the back and once on the head.”	News report	Greg Palast, <i>Update: Cops Beat Our Cameraman ZD Roberts</i> , GREGPALAST.COM (Mar. 18, 2012), http://www.gregpalast.com/cops-beat-our-cameraman-zd-roberts/ (last updated Mar. 19, 2012).
104	March 17 - 18	Barricade (multiple) (push)	A protester stated that while he was standing in a crowd watching another arrested protester allegedly having a seizure, officers placed barricades in front of the crowd and drove into them with their shoulders, pushing the crowd back. At one point, the protester stated that his foot got caught and he fell; the barricade passed over his feet, trapping him, before officers stopped pushing. The protester stated that officers started pushing again when he got to his feet.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).
105	March 17 - 18	Punch (head) Push (multiple) (from behind)	A protester stated that she witnessed police punch a woman in the side of her head and shove already-handcuffed protesters from behind as they were walking onto a bus used to transport them to detention.	Research Team interview	Interview with protester (QQQ11) (2012).
106	March 17 - 18	Push (multiple) (from behind) (journalist)	A journalist stated that he was shoved from behind, and saw “a lot of other people shoved.” He saw another officer repeatedly shove a woman from behind, even though she said that she was leaving.	Research Team interview	Interview with J.A. Myerson (Journalist) (2012).

107	March 17 - 18	Punch (head) (multiple)	A journalist stated that he witnessed police “punch people in the heads to get them to release” from nonviolent resistance positions.	Research Team interview	Interview with J.A. Myerson (Journalist) (2012).
			Another witness stated that he saw police “indiscriminately” punching protesters whose arms were locked together.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).
			The same witness wrote that he witnessed “cops [sic] fists flying at people on the ground.”	Blog	Tim Weldon, <i>Accounting for Violence</i> , WALKING LION (Mar. 19, 2012), http://www.walkinglion.org/2012/03/accounting-for-violence.html . <i>Note: Content and authorship of blog post confirmed to Research Team by Tim Weldon.</i>
108	March 17 - 18	Kick (multiple) Throw	A journalist stated that he witnessed police kicking protesters and an officer picking up and “throw[ing] a girl.”	Research Team interview	Interview with J.A. Myerson (Journalist) (2012) (witnessing police “throw[ing] a girl – he picked her up and threw her.”).
			Another journalist stated that an officer “threw a young woman to the ground.” It is unclear whether this account pertains to the same incident as the previous one.	Journalist tweet	Tweet by Ryan Devereaux, Twitter (Mar. 18, 2012, 12:47 AM), https://twitter.com/rdevro/status/181240447711186945 (“A sergeant threw a young woman to the ground and protesters became enraged. Throwing debris in the street. pic.twitter.com/L9Bp8Uag”). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.</i>
109	March 17 - 18	Push (x 2) (chest)	A protester alleged that when he approached an officer to greet him, he was shoved hard twice in the chest without warning.	Research Team interview	Interview with protester (ZZY99) (2012).
110	March 17 - 18	Drag	A witness described seeing people being dragged by their hair and clothes.	Research Team interview	Interview with protester (LLL66) (2012).
111	March 17 - 18	Baton (hit) (multiple)	A protester stated that after a crowd was pushed from one sidewalk to another, a group of officers came charging at the crowd, swinging their batons “indiscriminately.” Approximately 7-10 people fell to the ground, and officers hit them with batons.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).
			The protester wrote that he “saw batons swinging at a pile of people that had been dominoed into each other by the police mercilessly pushing back”	Blog	Tim Weldon, <i>Accounting for Violence</i> , WALKING LION (Mar. 19, 2012), http://www.walkinglion.org/2012/03/accounting-for-violence.html . <i>Note: Content and authorship of blog post confirmed to Research Team by Tim Weldon.</i>

112	March 18	Stomp (face)	A journalist reported that a protester stated that “[p]olice broke my left thumb and possibly my jaw. My right ear is bleeding and theres [sic] a bootprint on my face.”	News report	Ben Yakas, <i>Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass</i> , GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php (quoting a tweet from protester Shawn Carrie).
			A journalist stated that she witnessed one arrested protester screaming that his thumb was broken, and that he had smudges all over his face “like [his] face had been stepped on.”	Research Team interview	Interview with independent journalist and teacher (SSS88) (2012).
113	March 18	Push into glass Punch (face)	A journalist reported that police “allegedly slammed” a man “against a glass window.” The journalist provided video of the events leading up to the alleged incident and a picture showing a visible crack in the glass after the incident.	News report	Ben Yakas, <i>Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass</i> , GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php .
			Another journalist stated that he witnessed police “slam a protester into [a] door,” and that the protester was “punched in the face.” The journalist also posted a picture of a pane of glass with large cracks in it and stated that “[t]his was the result.”	Journalist tweet	Tweet by Ryan Devereaux (Journalist, Guardian), TWITTER (Mar. 18, 2012, 1:20 AM), https://twitter.com/rdevro/status/181248759529869312/photo/1 (“Just saw police slam a protester into this door, 55 East 10th. This was the result. Arrestee was punched in the face. pic.twitter.com/BKw7eN4N ”). <i>Note: Content and authorship of tweet confirmed to Research Team by Ryan Devereaux.</i>
114	March 18	Stomp (neck)	A news report quoted a protester who alleged that an officer “stomped on the back of [a protester’s] neck as his head was up on a step.”	News Report	Ben Yakas, <i>Video: NYPD Officer Allegedly Slammed OWS Medic’s Head into Glass</i> , GOTHAMIST (Mar. 18, 2012), http://gothamist.com/2012/03/18/nypd_officer_allegedly_smashed_ows.php (quoting a tweet from protester Shawn Carrie).
115	March 18	Throw against wall	A journalist stated that police threw a man “against a metal storefront shutter. Really hard. The guy was running, [and the] cops caught him and threw him.”	Research Team interview	Interview with journalist (AAA88) (2012).
116	March 20-21	Throw to ground (x 2) (resulted in reported concussion) Push (multiple)	In an interview with CBS News, a woman said she was thrown by an officer and that she suffered a concussion.	News report	CBS New York, <i>Hundreds Of OWS Protesters, NYPD Clash In Union Square Park</i> , CBS NEWS NEW YORK (Mar. 21, 2012), http://newyork.cbs.local.com/2012/03/21/hundreds-of-ows-protesters-nypd-clash-in-union-square-park/ (quoting an Occupy medic, Maria Tardif, as saying: “I was thrown over an officer who was bending down. I hit the back of my head, I have a concussion”).

			A journalist reported that “dozens of officers plunged into [a] crowd from two directions, shoving protesters and causing some to stumble backward and fall. Officers threw two people to the ground, including a woman who lay on her back for several minutes before an ambulance arrived to attend her.”	News report	Al Baker and Colin Moynihan, <i>Occupy Protesters are Arrested at Union Square Park</i> , N.Y. TIMES (Mar. 21, 2012), http://cityroom.blogs.nytimes.com/2012/03/21/police-and-protesters-clash-at-union-square-park/?ref=occupywallstreet .
			A legal observer stated that a protester was thrown backward by an officer so forcefully that she went “semi-airborne” and landed on her back and her head; her head slammed on the ground.	Research Team interview	Interview with Dan Shockley (Legal Observer) (2012).
			A witness stated that police were “hurling their bodies into the group” of protesters, and that they “shoved a woman so hard, she went down [and] hit her head.” She “seemed unconscious” and was “not moving.”	Research Team interview	Interview with protester (ZZY99) (2012).
			Video shows a woman lying motionless on the ground for several minutes, being tended to by Occupy medics.	Video	wearechange, <i>NYPD Tramples Injured Protester at Union Square</i> , YOUTUBE (Mar. 21, 2012), http://www.youtube.com/watch?v=UDWHRTX9Yrk&feature=plcp&oref=http%3A%2F%2Fwww.youtube.com%2Fuser%2Fwearechange%2Fvideos%3Fsort%3Ddd%26view%3D0%26page%3D2&has_verified=1 (injured woman at 5:06).
117	March 20-21	Push (multiple) Barricade (push) (chest)	A witness claimed that officers pushed into crowds of protesters, almost causing the crowd to fall on the injured woman from Incident 116. The witness stated that she was shoved in the chest by an officer with a wooden barricade.	Research Team interview	Interview with protester (OOO33) (2012) (stating that she “was standing near [the injured medic]” and that she put her arms out to “protect the person on the ground,” stating repeatedly “there is an injured person,” but was then shoved with a barricade by an officer).
			Another witness stated that while the injured woman from the above incident was being tended to by paramedics, police began shoving crowds of protesters again and used at least one barricade as a “battering ram Not just pushing it on them—crashing onto them.”	Research Team interview	Interview with protester (ZZY99) (2012).

			Video appears to show that paramedics were on the scene and tending to the injured woman, and that a protester pushed a barricade away from the crowd (and the injured woman), at which point police shoved the barricade back into place and reached into the crowd, causing the barricade to press into the crowd. Video also appears to show several officers running into the crowd, pushing protesters out of the way.	Video	wearechange, <i>NYPD Tramples Injured Protester at Union Square</i> , YOUTUBE (Mar. 21, 2012), http://www.youtube.com/watch?v=UDWHRTX9Yrk&feature=plcp&oref=http%3A%2F%2Fwww.youtube.com%2Fuser%2Fwearechange%2Fvideos%3Fsort%3Ddd%26view%3D0%26page%3D2&has_verified=1 (barricades at 7:23, pushes at 7:33).
118	March 24	Stomp (head)	A journalist stated that police “stomped” on a man’s head.	Journalist tweet	Tweet by Nick Pinto (Journalist, Village Voice), TWITTER (Mar. 18, 2012, 12.54 AM), https://twitter.com/macfathom/status/183627222333128704 (“[a]nother guy, de-arrested after police stomped his head is dpkayed [sic] on the sidewalk as street medics attend. #OWS”). <i>Note: Content and authorship of tweet confirmed to Research Team by Nick Pinto.</i>
119	March 24	Flex-cuffs (tight)	Video shows that officers arrested a protester and bound his hands with flex-cuffs. The protester asked officers at least ten times to remove or loosen the flex-cuffs, several times stating that he could not feel his hands. Police did not respond to his requests and left him cuffed for at least eight minutes after his initial request for the flex-cuffs to be removed.	Video	NewYorkRawVideos, <i>Arrests at M24 Protest Police Brutality / Fire Ray Kelly March March 24 2012 Occupy Wall Street</i> , YOUTUBE (Mar. 25, 2012), http://www.youtube.com/watch?v=45VsFdu0Qq0 (requests to remove or loosen flex-cuffs at 4:03, 4:17, 4:49, 4:58, 5:06, 5:32, 5:55, 6:05, 6:29, and 7:09).
APRIL 2012					
120	April 16	Push (live-streamer)	A livestreamer stated that an officer walked to protesters on the steps of Federal Hall and ordered them all to get off. One individual protested and the officer reportedly said, “I’m sick of it!” and shoved the livestreamer.	Research Team interview	Interview with livestreamer (497AB) (2012).
121	April 16	Throw to ground	A journalist reported: “As a crowd of protesters began shouting and milling near the bottom of the steps of Federal Hall, a police commander grabbed a demonstrator from behind, threw him to the sidewalk and arrested him.”	News report	Colin Moynihan, <i>Protesters Arrested in Sleep-Out and Demonstration Near Stock Exchange</i> , N.Y. TIMES (Apr. 16, 2012, 11:14 AM), http://cityroom.blogs.nytimes.com/2012/04/16/four-protesters-arrested-in-sleep-out-near-stock-exchange/?src=tp .

122	April 20	Push (back)	A journalist reported that a protester “said that a wave of officers had passed when an officer trailing behind shoved a man in the back.”	News report	Colin Moynihan, <i>Wall Street Protesters Lying on Sidewalk Are Arrested</i> , N.Y. TIMES (Apr. 20, 2012, 8:56 PM), http://cityroom.blogs.nytimes.com/2012/04/20/wall-st-protesters-lying-on-sidewalk-are-arrested/ .
MAY 2012					
123	May 1	Throw to ground (multiple)	A journalist witnessed police throwing people to the ground who were near officers’ targets for arrest.	Research Team Interview	Interview with journalist (AAA88) (2012).
124	May 1	Scooter	A journalist stated that officers on scooters “aggressively herd[ed] a woman in a wheelchair.”	Journalist tweet	Tweet by Nick Pinto (Journalist, Village Voice), TWITTER (May 1, 2012, 2:08 PM), https://twitter.com/macfathom/status/197386970287185921 (“[s]coter cops aggressively herding a woman in a wheelchair. Chopper appears overhead. #OWS #m1nyc #Wildcat”). <i>Note: Content and authorship of tweet confirmed to Research Team by Nick Pinto.</i>
125	May 30	Push to ground (legal observer)	Video appears to show that an officer pushed a legal observer to the ground.	Video	NewYorkRawVideos, <i>NYC Casseroles Night - May 30 2012 Arrest footage & Repression - Occupy Wall St</i> , YOUTUBE (May 31, 2012) http://www.youtube.com/watch?v=U2Mw-rjaclyE (push to ground at 8:03).
			The legal observer stated that he was “knocked over” by an officer without warning while trying to observe at a protest and that he was the one who appeared to be pushed in the above video.	Research Team interview	Interview with Ben Meyers (Legal Observer) (2012).
126	May 30	Push/Pull (resulted in broken clavicle)	A member of the Research Team witnessed officers roughly handcuffing a man who had stated repeatedly that he had a shoulder injury. An officer called him a “liar” and repeatedly and intentionally pushed and pulled the injured shoulder. After the EMTs arrived, they inspected his shoulder, removed the handcuffs, and put him in an ambulance for treatment. The man’s lawyer later stated that the protester in fact had a broken clavicle.	Research Team observations	Witnessed by member of Research Team.

JUNE 2012

127	June 13	Kick (head)	A journalist reported that witnesses stated that an officer kicked a man in the head while he was being held to the ground.	News report	Colin Moynihan, <i>Protesters Arrested in Quebec Solidarity March</i> , N.Y. TIMES (June 14, 2012, 3:13 PM), http://cityroom.blogs.nytimes.com/2012/06/14/protesters-arrested-in-quebec-solidarity-march/ (last updated Jun. 15, 2012) (interviewing a witness who stated that “[w]hile [the man] was restrained, a police officer came over and gave him two very hard kicks with his boot downward on the side of the guy’s head, on his left temple” and that he and other witnesses asked for the officer’s badge number, but the officer hid his badge and rode off in a van).
			A member of the Research Team witnessed the officer kicking the man in the head. The officer then refused the Research Team member’s request for the officer’s name.	Research Team observations	Witnessed by member of Research Team.
			A witness stated that he heard a protester saying that an officer had kicked a man in the head. The witness then followed the officer and asked him repeatedly for his badge number; other officers refused the witness’s request, at one time saying that they would give him the badge number “later.” The kicking officer moved away from the witness and covered his badge number. The witness stated that the officer was driven off in a van.	Research Team interview	Interview with Tim Weldon (Protester trained in post-conflict development) (2012).

JULY 2012

128	July 11	Grab	A journalist reported that a 56-year-old female protester told him that she was grabbed by an officer “[a]s she was getting up and gathering her things.”	News report	Colin Moynihan, <i>At Least 4 Arrested at Zuccotti Park After Occupy March</i> , N.Y. TIMES (July 12, 11:14 AM), http://cityroom.blogs.nytimes.com/2012/07/12/at-least-3-arrested-at-zuccotti-park-after-occupy-march/ .
			Video shows that an officer roughly grabbed a female protester by the upper arm and led her out of the park after police told her to leave because it was against park rules to have a chair in the park.	Video	frozac, <i>JRozLive</i> , USTREAM (July 11, 2012), http://www.ustream.tv/channel/jrozlive (grab at 6:30).
			A journalist who interviewed the protester reported that “[w]hen they started touching her belongings, [the protester] told police ‘that’s private property.’” The police then “grabbed” the protester.	News report	Kristen Gwynne, <i>J11: Zuccotti Re-Occupation Stirs Nostalgia for Last Fall</i> , ALTERNET (July 12, 2012, 8:02 AM), http://www.alternet.org/newsandviews/article/1026807/j11%3A_zuccotti_re-occupation_stirs_nostalgia_for_last_fall/ .

			The protester who was grabbed stated that she was knitting while sitting in a “folding lawn chair . . . all afternoon and into the evening . . .” She also stated: “I was asked to leave. I inquired about being shown the rules, in writing, while I put away my knitting, stood up, folded my chair and put in [sic] on my shopping cart. I was trying to comply . . . with their "request" to exit the park . . . when an officer grabbed my cart and tried to take it from me. I said, that's private property. That was when I felt a leather gloved . . . hand grab my wrist and I panicked.”	Blog	Marsha Spencer, <i>Shall We Dance?</i> , LIVING IN A KNITTERS PARADISE (July 12, 2012, 2:50 PM), http://helloknittymi.blogspot.com/2012/07/shall-we-dance.html?spref=tw .
129	July 11	Push Throw to ground	Video shows that an officer appeared to push a protester. Another officer grabbed the protester by the head and threw him to the ground.	Video	frozac, <i>JRozLive</i> , USTREAM (July 11, 2012), http://www.ustream.tv/channel/jrozlive (push and throw to ground at 7:36).
			A journalist reported that “an officer threw [the protester] to the ground in a headlock. . . .”	News report	Kristen Gwynne, <i>J11: Zuccotti Re-Occupation Stirs Nostalgia for Last Fall</i> , ALTERNET (July 12, 2012, 8:02 AM), http://www.alternet.org/newsandviews/article/1026807/j11%3A_zuccotti_re-occupation_stirs_nostalgia_for_last_fall/ .
130	July 11	Push (live-streamer)	Video shows that an officer pushed a livestreaming videographer. He was subsequently arrested with no apparent cause.	Video	frozac, <i>JRozLive</i> , USTREAM (July 11, 2012), http://www.ustream.tv/channel/jrozlive (push at 8:24, arrest at 13:53).

Appendix II: Letters from the NYPD



POLICE DEPARTMENT

Legal Bureau
One Police Plaza, Room 1406
New York, N.Y. 10038
(646) 610-5400

May 15, 2012

Sarah Knuckey and Katherine Glenn, Esqs.
Protest and Assembly Rights Project
Global Justice Clinic
Washington Square Legal Services
245 Sullivan Street
New York, NY 10012

Dear Ms. Knuckey and Ms. Glenn:

I write in response to your letter dated April 13, 2012 to the Police Commissioner and your letter dated April 6, 2012 to Philip Banks, Chief of the NYPD Community Affairs Bureau, in which you request meetings to discuss their views on the Occupy Wall Street protests.

As you are likely aware, there is ongoing criminal and civil litigation concerning many different facets of the Occupy Wall Street phenomena. Indeed, it appears that a number of attorneys and law firms that are associated with your organization are counsel in those civil and criminal proceedings. Given the pendency of litigation in which attorneys associated with the Protest and Assembly Rights Project are counsel, it would be inappropriate for the Police Commissioner, Chief Banks or any member of the NYPD to participate in the interviews that you have requested.

It is our view, however, that the police actions that have been taken in connection with Occupy Wall Street activities have been lawful. The legality of the Department's actions have been confirmed in at least two recent court decisions, Waller v. City of New York, 34 Misc. 3d 371 (NY Cty. Sup. Ct., 2011) and People v. Nunez, 2012 NY Slip Op. 22089 (N.Y. Cty. Crim. Ct. April 6, 2012). In addition, the Department has accommodated on an almost daily basis since last fall, numerous large groups of demonstrators and marchers, all with virtually no cooperation, notice or advance planning from Occupy Wall Street representatives. Appropriate, lawful enforcement action has been taken when necessary and criminal proceedings have been commenced against individuals who have violated the law and been arrested for offenses including riot, assault, obstructing governmental administration, resisting arrest, criminal mischief, trespass and disorderly conduct.

I hope that you will find this information helpful in the preparation of your report.

Sincerely yours,

Thomas P. Doepfner
Assistant Deputy Commissioner

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>



POLICE DEPARTMENT

Legal Bureau
One Police Plaza, Room 1406
New York, N.Y. 10038
(646) 610-5400

July 16, 2012

Sarah Knuckey and Katherine Glenn, Esqs.
Protest and Assembly Rights Project
Global Justice Clinic
Washington Square Legal Services
245 Sullivan Street
New York, NY 10012

Dear Ms. Knuckey and Ms. Glenn:

I write in response to your letter dated June 15, 2012. As discussed in that letter, given the ongoing litigation over many Occupy Wall Street issues, we cannot agree to allow NYPD personnel to participate in the interviews you have requested. Our views concerning Occupy Wall Street, to the extent they can be discussed outside the scope of the pending litigation, are set forth in my letter to you of June 15. I hope that you will include those views in your report.

Sincerely yours,

Thomas P. Doepfner
Assistant Deputy Commissioner

COURTESY • PROFESSIONALISM • RESPECT

Website: <http://nyc.gov/nypd>

Appendix III: Index of Arrests of Journalists and Others Documenting Occupy Wall Street

Many journalists and others documenting Occupy Wall Street have been arrested since September 2011. The arrest of journalists, particularly around the Zuccotti eviction, has drawn strong condemnation.¹ Yet despite documentary and video footage, and the detailed statements of credentialed and non-credentialed journalists, the City and the Police Department have contested assertions regarding the arrests of journalists.²

This Index is a compilation of 18 alleged incidents involving the arrest of journalists as well as others documenting the Occupy protests. The Index includes incidents documented by the Research Team that raise concerns about the police arrest of individuals documenting protests or the police response. The Index only includes incidents where the available evidence either (a) *strongly suggests* that the arrest was unjustified and (b) *strongly suggests* that the individual arrested was either an accredited journalist (including freelance) or was exclusively or primarily present at the protest in a documenting role.

Due to the large number of Occupy protests, not all incidents have been recorded or are accessible. Numerous alleged incidents have been excluded because they could not be sufficiently documented. The Research Team's view is that the Index represents just a portion of the actual number of incidents of arrest of journalists and others documenting Occupy.

The sources of the alleged incidents documented here include direct observations by members of the Research Team, videos and photos, news reports, and social media. It relies in part on the monitoring of police protests carried out by Josh Stearns (not affiliated with this project or report).³

¹ See, e.g., Letter from Gabe Pressman, President, New York Press Club Found., to Michael Bloomberg, Mayor, N.Y.C., and Raymond Kelly, Comm'r, N.Y.C. Police Dep't (Nov. 15, 2011), *available at* http://www.mediabistro.com/tvspy/ny-press-club-calls-for-investigation-into-nypds-treatment-of-journalists-during-zuccotti-park-raid_b29308 ("The brash manner in which officers ordered reporters off the streets and then made them back off until the actions of the police were almost invisible is outrageous. We want the department to investigate the incidents involved this crackdown on Zuccotti Park and we want assurances it won't happen again."); *Journalists Detained at NYC Occupy Protests*, FIRST AMENDMENT CENTER (Nov. 15, 2011), <http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests> ("American foreign correspondents routinely put themselves in harm's way to do their jobs, in some of the most brutal dictatorships in the world. And their NYC colleagues deserve the freedom to make the same choice," Manhattan Borough President Scott Stringer said. "Zuccotti Park is not Tiananmen Square.").

² The Mayor implicitly acknowledged the complaints about the NYPD treatment of journalists on the morning of the eviction, but defended the Police Department's treatment of journalists. See *Journalists Detained at NYC Occupy Protests*, FIRST AMENDMENT CENTER (Nov. 15, 2011), <http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests> (Mayor Bloomberg stating that the purpose of the NYPD's treatment is to "protect the members of the press"). Yet the Police Department continues to contest the assertions that there were significant arrests during the eviction." See, e.g., Peter C. Mastroianni, *Kelly Talks Policy and Politics*, QUEENS CHRON. (June 7, 2012, 10:30 AM), http://www.qchron.com/editions/queenswide/kelly-talks-policy-and-politics/article_2671bf68-065f-5926-923f-0e6caedf25e2.html (last updated June 14, 2012, 11:18 AM) ("Paul Browne, the deputy commissioner for public information, who accompanied [Police Commissioner Raymond] Kelly to the interview, added that only one journalist was arrested during the [eviction] operation, despite stories to the contrary, which he called 'a total myth.' Occupy Wall Street protesters were forging press credentials in an effort to get through the police lines, he added, but that doesn't mean actual reporters were arrested."); Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), *available at* <http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/> (memorandum entitled "Just 5 of the '26 arrested reporters' are actually credentialed reporters").

³ See Josh Stearns, *Tracking Journalist Arrests at Occupy Protests Around the Country, Part One*, STORIFY, <http://storify.com/jcstearns/tracking-journalist-arrests-during-the-occupy-prot> (last visited July 24, 2012) [hereinafter Josh Stearns, *Tracking Journalist Arrests*] (providing a link to a spreadsheet, available at https://docs.google.com/spreadsheets/pub?hl=en_US&hl=en_US&key=0AqRq1hdSmsX3dGhIenNHRkt0czg5NUFMbUhmUktuQ1E&single=true&gid=0&output=html).

NO .	DATE OF ARREST	NAME	MEDIA TYPE	OUTLET	DESCRIPTION AND DOCUMENTATION OF ARREST
SEPTEMBER 2011					
1	September 24	John Farley	Multimedia web editor	WNET/Thirteen's MetroFocus	<p>Journalist arrested while attempting to interview women who had been pepper sprayed by a police officer.</p> <p>"When I saw the young women get pepper sprayed, I ran over to interview them. While holding a microphone and wearing a badge identifying myself as an employee of 'WNET – New York Public Media,' I found myself suddenly roped into one of the large nets. I was thrown against a wall and handcuffed with hard plastic zip-tie restraints. I sat on the sidewalk with about 50 others. I yelled over and over 'I'm press! I'm with WNET MetroFocus! Please do not arrest me.'"</p> <p>- John Farley, <i>Observations of a Jailed Journalist</i>, THIRTEEN METROFOCUS (Sept. 27, 2011, 6:00 AM), http://www.thirteen.org/metrofocus/2011/09/observations-of-a-jailed-journalist/.</p>
OCTOBER 2011					
2	October 1	Natasha Lennard	Journalist	Freelance; Reporting for the New York Times	<p>Journalist arrested while reporting on the kettling of hundreds of protesters on the Brooklyn Bridge.</p> <p>"#OccupyWallStreet I got let go. After hours on police bus. Most ppl still handcuffed on buses. Trying to find space for us in precincts"</p> <p>- Tweet by Natasha Lennard, TWITTER (Oct. 1, 2011, 6:49 PM), https://twitter.com/natashalennard/status/120314325360586753.</p> <p>"One by one, people were systematically turned around, handcuffed and lined up along the bridge behind police lines as the drizzle in the air turned into cold rain. I was herded onto a New York City bus with those arrested at the same time."</p> <p>- Natasha Lennard, <i>Covering the March, On Foot and in Handcuffs</i>, N.Y. TIMES (Oct. 2, 2011, 10:30 PM), http://cityroom.blogs.nytimes.com/2011/10/02/covering-the-march-on-foot-and-in-handcuffs/.</p>
3	October 1	Kristen Gwynne	Journalist (print); editorial assistant	Freelance; Alternet	<p>Journalist arrested while reporting on the kettling of hundreds of protesters on the Brooklyn Bridge.</p> <p>An account of the arrests is available at Kristen Gwynne & Sarah Seltzer, <i>NYPD Mass Arrests of Occupy Wall Street Protesters: Firsthand Account from AlterNet Staffer Trapped on Bridge</i>, AlterNet (Oct. 1, 2011, 2:58 PM), http://www.alternet.org/newsandviews/article/674824/nypd_mass_arrests_of_occupy_wall_street_protesters_firsthand_account_from_alternet_staffer_trapped_on_bridge/.</p>

4	October 1	Stephanie Keith	Photographer	Freelance	<p>Journalist arrested while reporting on the kettling of hundreds of protesters on the Brooklyn Bridge.</p> <p>“From that point, until they stopped the march on the bridge, the police didn't say anything more about arrests. . . It was only when we got about a third of the way up the bridge that the police turned round, blocked the roadway, and read from the same script – that people would be arrested.”</p> <ul style="list-style-type: none"> - Matt Wells, <i>Occupy Wall Street – The Story of the Brooklyn Bridge 'Trap'</i>, GUARDIAN (Oct. 3, 2011, 12:31), http://www.guardian.co.uk/world/blog/2011/oct/03/occupy-wall-street-brooklyn-bridge-arrests (giving the written account of Stephanie Keith).
NOVEMBER 2011					
5	November 15	Julie Walker	Journalist (radio)	National Public Radio	<p>Journalist arrested during eviction, outside Zuccotti Park.</p> <p>Confirmed as arrested with valid NYPD-issued press pass. Desk appearance ticket issued for charge of disorderly conduct.</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>“Julie Walker, a freelance radio journalist, told the AP she was arrested on a disorderly conduct charge while walking several blocks north of Zuccotti Park after covering the raid that evicted protesters from the two-month encampment. She said an officer grabbed her arm twice and arrested her after she asked for the officer's name and badge number. ‘I told them I'm a reporter,’ said Walker, who was working for National Public Radio. ‘I had my recorder on before he ripped it out of my hand.’”</p> <ul style="list-style-type: none"> - <i>Journalists Detained at NYC Occupy Protests</i>, FIRST AMENDMENT CENTER (Nov. 15, 2011), http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests. <p>“Julie Walker, a freelance radio reporter, said she was arrested while trying to report on the protests overnight, while wearing her NYPD-issued press identification. Walker said she spent three to four hours in custody before she was released around 7 a.m. She was given a desk appearance ticket. ‘When I was let out I just went straight back to work,’ Walker said.”</p> <ul style="list-style-type: none"> - Meena Hartenstein, <i>Update to Occupy Wall Street: November 15th NYPD Raid on Zuccotti Park, November 16th, and November 17th Day of Action</i>, N.Y. DAILY NEWS (Nov. 15, 2011, 1:05 PM), http://live.nydailynews.com/Event/Showdown_at_Zuccotti_Park_The_NYPD_s_raid_on_Occupy_Wall_Street_NYC?Page=2.

6	November 15	Jared Maslin	Journalist (print / online)	Freelance, writing for The Local East Village, a partnership between the <i>New York Times</i> and New York University	<p>Journalist arrested at approximately 2 a.m. outside Zuccotti Park during the November 15 eviction.</p> <p>“At around 1:45 a.m., finding all routes to the park blocked, this reporter filmed scuffles between the police and a crowd. . . .This reporter tweeted from the scene: ‘I am one block north of the park and can’t leave. Crowd on sidewalk literally surrounded by police.’ The Local’s reporter, who repeatedly identified himself to the police as a journalist while on the scene, complied with the order and walked north while filming protesters, however (as seen at the 2:11 mark in the video) his progress was stopped by a group of officers blocking the sidewalk. . . .One of the officers arrested him using plastic Flexi-Cuffs, even as he continued to identify himself as a journalist and called attention to press credentials hanging from his neck. (The press card had been issued for an unrelated assignment by the Media Accreditation and Liaison Unit of the United Nations in September). . . . This reporter was released at 9:35 a.m. and charged with disorderly conduct . . .”</p> <ul style="list-style-type: none"> - Jared Maslin, <i>Video: Reporter for The Local Is Arrested During Occupy Wall Street Clearing</i>, LOCAL EAST VILLAGE (Nov. 15, 2011, 2:05 PM), http://eastvillage.thelocal.nytimes.com/2011/11/15/video-reporter-for-the-local-is-arrested-during-occupy-wall-street-clearing/ (providing supporting video, in which the journalist is arrested, screaming, “I am a reporter. I am a reporter. I am a journalist. I am a journalist. I am a reporter. This is my press credential,” at 2:16-2:33).
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7	November 15	Jennifer Weiss	Journalist (video / print)	<p>Agence France Presse</p> <p>“Freelance video/print journalist with AFP and the Wall Street Journal, co-producer of @HardTimesL OLI and Once in a Lullaby, and editor at @jcindpendent.”</p> <p>Jennifer Weiss, Profile, TWITTER, https://twitter.com/jennifer_weiss/ (last visited July 24, 2012).</p>	<p>Journalist arrested during eviction, outside Zuccotti Park.</p> <p>Arrested screaming, with increasing exasperation, “I’m with the press. I’m with the press. I’m with the press. I don’t want to get arrested. I’m with the press. I’m with the press. I’m with the press. Stop it. I’m with the press. Please put me down. Please put me down. Please put me down. I’m with the press. I’m with the press. I’m with the press. Please. I’m with the press. I’m with the press.” [Video cuts with the words of a police officer off-screen, “Lock her up. Somebody lock her up.”]</p> <ul style="list-style-type: none"> - AFP, <i>AFP Journalist Films Own Arrest at NY Protest</i>, YOUTUBE (Nov. 18, 2011), http://www.youtube.com/watch?v=QdXPBBj7gyw&feature=player_embedded (at 0:12-0:34). <p>“I kept the camera rolling during my arrest covering #OWS Tuesday bit.ly/w0BBuO @jcstearns #journalarrest”</p> <ul style="list-style-type: none"> - Tweet by Jennifer Weiss, TWITTER (Nov. 18, 2011, 10:03 AM), https://twitter.com/jennifer_weiss/status/137591714788556800. <p>“When I was arrested, I was put in a police van with NY councilman Ydanis Rodriguez and an @AFP photographer.”</p> <ul style="list-style-type: none"> - https://twitter.com/jmalsin/status/136463511684530176. <p>“The AFP photographer/videographer who was arrested alongside me Tuesday morning was @jennifer_weiss cc @jcstearns @MatthewWells @nyclu”</p> <ul style="list-style-type: none"> - Tweet by Jared Malsin, TWITTER (Nov. 17, 2011, 9:10 PM), https://twitter.com/jmalsin/status/137397244033904640.
8	November 15	Patrick Hedlund	News editor	<p>DNAinfo</p>	<p>Journalist arrested at the eviction, outside perimeter of Zuccotti Park, at 4:30 a.m.</p> <p>Confirmed as arrested with valid NYPD-issued press pass. Desk appearance ticket issued for charge of disorderly conduct.</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>“Patrick Hedlund, a DNAinfo.com News Editor, and Paul Lomax, a freelance photographer assigned to cover Occupy Wall Street for DNAinfo.com, were arrested in separate incidents. Hedlund, who has reported in the city and around the United States for seven years, was arrested about 4:30 a.m. outside the perimeter of Zuccotti Park.”</p> <ul style="list-style-type: none"> - Michael Ventura, <i>DNAinfo.com Journalists Arrested While Covering OWS Police Raids</i>, DNAINFO.COM (Nov. 15, 2011, 1:37 PM), http://www.dnainfo.com/new-york/20111115/downtown/dnainfo-journalists-arrested-while-covering-ows-police-raids#ixzz21X97jPUz (last updated Nov. 16, 2011, 7:16 AM).

9	November 15	Justin Bishop	Photo-grapher	Vanity Fair	<p>Photographer arrested on the day of eviction, at Duarte Square, owned by Trinity Church.</p> <p>Describing his arrest: “I was shooting without incident, made eye contact with several cops, in fact. Then all of a sudden the park was nearly empty, and from my end I couldn’t see that a few reporters had already been cuffed. Three officers were marching my way. I considered turning and hopping over the wall behind me, but figured it better to announce myself as press than to be charged with ‘resisting arrest’ (or worse, being pulled down from the eight-foot wall in any kind of painful way). They grabbed both my arms and snatched the camera out of my hands before asking for credentials. I didn’t actually think that my ‘V.F. Press ID’ card or my business card would keep me from getting escorted away in handcuffs. But foolishly I did think it would assure I get hauled off along with the other journalists, and given a warning before being released. Not quite. We were processed and put on the bus along with the rest of ‘em. Off to One Police Plaza, photographed along the way.”</p> <ul style="list-style-type: none"> - Juli Weiner, <i>An Oral History of a Vanity Fair Photographer’s Arrest at Occupy Wall Street</i>, VF DAILY (Nov. 17, 2011, 2:20 PM), http://www.vanityfair.com/online/daily/2011/11/An-Oral-History-of-a-emVanity-Fairem-Photographers-Arrest-at-Occupy-Wall-Street (with photo and video).
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10	November 15	Matthew Lysiak	Journalist	New York Daily News	<p>Journalist arrested on day of eviction, at Duarte Square, owned by Trinity Church.</p> <p>Confirmed as arrested for trespassing, arrest “voided.” “No [valid NYPD press pass] – may carry expired pass.”</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>Caption of video reads: “Here's video of our reporter Matt Lysiak getting arrested earlier today. He's the one getting arrested at 1:30.” Arrestee cannot be heard, but image shows police officer arresting man with two large cameras around his neck.</p> <ul style="list-style-type: none"> - Anjali Mullany, <i>NYPD Raid on Zuccotti Park, November 16th, and November 17th Day of Action</i>, N.Y. DAILY NEWS (Nov. 15, 2011, 5:41 PM), http://live.nydailynews.com/Event/Showdown_at_Zuccotti_Park_The_NYPDs_raid_on_Occupy_Wall_Street_NYC/18742849 (image at 1:28). <p>“I’ve been arrested.”</p> <ul style="list-style-type: none"> - Matthew Lysiak, Post to <i>Showdown at Zuccotti Park: The NYPD’s Raid on Occupy Wall Street</i>, N.Y. DAILY NEWS (Nov. 15, 2011, 12:57 PM), http://live.nydailynews.com/Event/Showdown_at_Zuccotti_Park_The_NYPDs_raid_on_Occupy_Wall_Street_NYC?Page=2. <p>“Matthew Lysiak of the Daily News of New York was also arrested at the park, according to witnesses and the Daily News.”</p> <ul style="list-style-type: none"> - <i>Journalists Detained at NYC Occupy Protests</i>, FIRST AMENDMENT CENTER (Nov. 15, 2011), http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests.
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11	November 15	Karen Matthews	Journalist (print)	Associated Press	<p>Journalist arrested on day of eviction, at Duarte Square, owned by Trinity Church.</p> <p>Confirmed as having valid NYPD-issued press pass. Arrested for trespassing and arrest “voided.”</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>“AP reporter Karen Matthews and AP photographer Seth Wenig were arrested by #NYPD while covering #Occupy protests.”</p> <p>Tweet by Chad Roedemeier (Director of State News & Member Choice Products, Associated Press), TWITTER (Nov. 15, 2011, 9:31 AM) https://twitter.com/chadroedemeier/status/136496632048005120.</p> <p>“Reporter Karen Matthews and photographer Seth Wenig of The Associated Press in New York were taken into custody along with about eight other people after they followed protesters through an opening in a chain-link fence into a park, according to an AP reporter and other witnesses.</p> <ul style="list-style-type: none"> - <i>Journalists Detained at NYC Occupy Protests</i>, FIRST AMENDMENT CENTER (Nov. 15, 2011), http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests.
12	November 15	Seth Wenig	Photographer	Associated Press	<p>Photographer arrested on day of eviction, at Duarte Square, owned by Trinity Church.</p> <p>Confirmed as having valid NYPD-issued press pass. Arrested for trespassing and arrest “voided.”</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/.

13	November 15	Paul Lomax	Photographer	Freelance; DNAInfo	<p>Photographer arrested on day of eviction, at Duarte Square, owned by Trinity Church, at approximately 12 p.m.</p> <p>Confirmed arrest with valid NYPD-issued press pass. Arrested for trespassing and arrest “voided.”</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>“Patrick Hedlund, a DNAinfo.com News Editor, and Paul Lomax, a freelance photographer assigned to cover Occupy Wall Street for DNAinfo.com, were arrested in separate incidents. . . .Lomax, a seasoned photographer who has worked for news organizations throughout the city, was arrested at Duarte Square, near Sixth Avenue and Canal Street, at approximately noon after protesters had made their way there. He was released after roughly four hours with all charges dropped, he said.”</p> <ul style="list-style-type: none"> - Michael Ventura, <i>DNAinfo.com Journalists Arrested While Covering OWS Police Raids</i>, DNAINFO.COM (Nov. 15, 2011, 1:37 PM), http://www.dnainfo.com/new-york/20111115/downtown/dnainfo-journalists-arrested-while-covering-ows-police-raids#ixzz21X97jPUz (last updated Nov. 16, 2011, 7:16 AM).
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14	November 15	Doug Higginbotham	Video-journalist	Freelance; working for TV New Zealand	<p>Videojournalist arrested on day of eviction while filming Zuccotti Park in the afternoon; released after several hours with a summons.</p> <p>Confirmed as arrested for disorderly conduct. "C summons issued." "No [valid NYPD press pass] – may carry expired pass."</p> <ul style="list-style-type: none"> - Memorandum from Stu Loeser, Spokesperson for Mayor Bloomberg (Nov. 17, 2011), <i>available at</i> http://observer.com/2011/11/bloomberg-spokesperson-admits-arresting-credentialed-reporters-reading-the-awl/. <p>"David Higginbotham, a freelance video journalist working for TV New Zealand, said he was arrested late this morning after protesters tried to re-enter Zuccotti Park. Higginbotham said he was standing on top of a phone booth to film and was told to get down. 'The police just pulled me off, put me in handcuffs, slapped me against the truck. They took my press ID off me,' said Higginbotham, who has worked a decade in New York. 'Ten years. Never been arrested. I covered 9/11. I covered DSK (Dominique Strauss-Kahn).'"</p> <ul style="list-style-type: none"> - <i>Journalists Detained at NYC Occupy Protests</i>, FIRST AMENDMENT CENTER (Nov. 15, 2011), http://www.firstamendmentcenter.org/several-journalists-arrested-detained-at-nyc-occupy-protests. <p>"A riot cop spied Doug up there and asked him to come down. Other cops started shouting. 'He's getting down,' I said, 'He's getting down.' The police started to ascend somehow. . . . As the Thin Blue Line grew closer, Doug made to hand me his camera. This is a \$40,000 implement. His lifeblood. . . . I tried to hold it. A cop reached out and took hold. The camera swayed his way. Doug pulled back. One of the riot police was trying to pull him off the telephone booth roof. That's when all hell broke loose. . . . I remember Doug saying, 'I'm just trying to do my job,' to which they replied, implacable, 'we're just trying to do ours'. When they applied the plastic handcuffs, I realised the NYPD's job definition now included arresting journalists. . . . They cut Doug loose several hours later. During the melee, part of his camera got smashed up. He had bruising, abrasions on his wrists where the cuffs were, and was brandishing a summons."</p> <ul style="list-style-type: none"> - Tim Wilson, <i>NYPD Arrests My Cameraman</i>, TV New Zealand (Nov. 16, 2011, 2:37 PM), http://tvnz.co.nz/world-news/tim-wilson-nypd-arrests-my-cameraman-4542886 (recounting the arrest and providing video of the arrest at 1:30).
15	November 17	Ryan Harvey	Correspondent	IndyReader	<p>Correspondent arrested during protest on two-month anniversary of Occupy Wall Street.</p> <p>"We just got word that Indyreader correspondent @ryanharveysongs just got arrested at #N17 #OWS action. Spread the word. FREE OUR JOURNALIST!"</p> <ul style="list-style-type: none"> - Tweet by @IndyReader, TWITTER (Nov. 17, 2011, 7:04 AM), https://twitter.com/Indyreader/status/137184246782636032.

DECEMBER 2011

16	December 3	Carla Murphy	Journalist	Freelance: Gotham Gazette and others	<p>Journalist arrested in the Bronx at an Occupy the Bronx protest over a community garden.</p> <p>Video shows an officer questioning a reporter filming an interview with an activist about whether she has a press pass. She asks, "Am I not allowed to be on the sidewalk interviewing someone?" The officer replies, "I just want to know if you have a press pass." At 10:24, a woman is arrested and identifies herself as a journalist.</p> <ul style="list-style-type: none"> - ricoism, <i>NYPD Wrongfully Arrested Participants of Occupy the Bronx Festivities</i>, YouTube (Dec. 4, 2011), http://www.youtube.com/watch?feature=player_detailpage&v=JdGcQvCXKdM#t=604s%C2%A0 (at 6:36-7:15 and 10:24-10:30). <p>"On December 3, Carla Murphy, a freelance journalist who has published with the Gotham Gazette, was arrested. In the video below you can clearly hear her telling police she is a journalist. The video also shows police giving another reporter a hard time."</p> <ul style="list-style-type: none"> - Josh Stearns, <i>Tracking Journalist Arrests</i>. <p>"Four activists and a freelance journalist were handcuffed on the sidewalk outside a vacant lot at Southern Blvd. and Union Ave. in Mott Haven, formerly the Morning Glory Community Garden."</p> <ul style="list-style-type: none"> - Daniel Beekman, <i>Police arrest five people to break up Bronx rally at community garden razed by the city for housing</i>, N.Y. DAILY NEWS (Dec. 6, 2011), http://www.nydailynews.com/new-york/bronx/police-arrest-people-break-occupy-bronx-rally-community-garden-razed-city-housing-article-1.987207?localLinksEnabled=false.
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17	December 12	John Knefel	Journalist	Freelance; citizen journalist. Has written about OWS for Salon	<p>Journalist arrested at a Goldman Sachs protest at New York's Winter Garden in the World Financial Center. One of nine citizen journalists or livestreamers reportedly arrested there.</p> <p>"...[M]y brother John and I were there to tweet and take pictures. . . . John and I walked over with a couple of other media people. He covered the Zuccotti Park eviction for Salon, live-tweets most of the OWS events in the city, and has gotten to know many of the independent journalists who document the movement." At one point during the protest, the police formed a circle around the protesters leading to their dispersal. "That was when everything escalated completely out of control. . . .Suddenly, the outer circle of cops was swarming in and violently pushing people away. John had been standing near the crowd, taking video. I was about 20 feet from him, and when I looked back in his direction, I saw his blue hood on the ground. I ran toward him and slid to the ground, leaning in between people's knees to take pictures. John was face down on the ground being handcuffed, his glasses flung across the floor and people screaming, 'Stop, stop, he didn't do anything!' . . . Several cops pushed me away as I asked, 'What is he being arrested for? He was taking pictures.' A cop said, 'He didn't produce an official press pass, so that means he was resisting arrest.' . . .[T]he same cop said, 'If you don't step back immediately, you will be arrested too.'"</p> <ul style="list-style-type: none"> - Molly Knefel, <i>Busted for Tweeting</i>, SALON (Dec. 13, 2012, 9:02 AM), http://www.salon.com/2011/12/13/busted_for_tweeting/. <p>Also on the same day, "a credentialed freelance photographer who was working for the New York Times was also blocked from filming and then forced out of the building by police. While not arrested, his story and the video below say a lot about how the arrests yesterday went down and the continued escalation between police and press."</p> <ul style="list-style-type: none"> - Josh Stearns, <i>Tracking Journalist Arrests. See also Joe Pompeo, In Video, Confrontation Between a 'Times' Photographer and the NYPD at Occupy Wall Street Protest Downtown</i>, CAPITAL (Dec. 12, 2011, 4:08 PM), http://www.capitalnewyork.com/article/media/2011/12/4586791/video-confrontation-between-times-photographer-and-nypd-occupy-wall-st (journalist confirmed as Robert Stolarik). <p>In one of the videos for the day of one of the livestreamers arrested (at 0:23), one livestreamer can be seen with his camera out and computer open, filming. For no apparent reason, he is tackled to the ground and his camera taken. Multiple police drag him across the floor and arrest him with his hands behind his back, and him still on the floor. Police then are aggressively moving people away from the site of the arrest. At 1:45, a legal observer reaches him and asks, "Are you ok?" He replies, "um, they broke my camera."</p> <ul style="list-style-type: none"> - OccupyTVNY, <i>NYPD Targets Media</i>, YOUTUBE (Dec. 12, 2011), http://www.youtube.com/watch?v=rcprvmc4WoI. <p>Event witnessed by member of Research Team.</p>
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18	December 17	Zach Roberts	Photo-journalist	Greg Palast and BBC	<p>Photojournalist arrested at a three-month anniversary protest march at Duarte Park.</p> <p>“Being arrested #d17”</p> <ul style="list-style-type: none"> - Tweet by Zach Roberts (Journalist, filmmaker, photographer), TWITTER (Dec. 17, 2011, 12:41 PM), https://twitter.com/zdroberts/status/148140855151173632. <p>“On Saturday, our man Zach D. Roberts, along with a bishop of the Episcopalian Church and three ministers of various faiths, plus a stand-up comic were pushed face first into the dirt at Duarte Park, hand-cuffed and hauled off in a police van to the lock-up in Lower Manhattan. I did NOT appreciate that this follows his previous bust at Occupy, the busting of our \$600 Tokina 11-16 f2.8 lens by a cop slamming his nightstick down on Zach (reparable) and hitting the lens (not reparable).”</p> <ul style="list-style-type: none"> - Greg Palast, <i>Our Photographer (& His Lens) Busted @ Occupy Wall Street</i>, GREGPALAST.COM (Dec. 21, 2011), http://www.gregpalast.com/our-photographer-his-lens-bustedoccupy-wall-street/.
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About the Protest and Assembly Rights Project:

In January 2012, international human rights and U.S. civil liberties experts at seven law school clinics across the United States formed the Protest and Assembly Rights Project. This joint project investigated the United States response to Occupy Wall Street in light of the government’s international legal obligations. This report is the first in a series of reports. This report focuses on the response in New York City. Subsequent reports will address the responses in Boston, Charlotte, Oakland, and San Francisco.

The participating law clinics are:

Project Directors and Coordinators:

- The Global Justice Clinic (NYU School of Law)
 - The Walter Leitner International Human Rights Clinic
at the Leitner Center for International Law and Justice (Fordham Law School)
 - The International Human Rights Clinic (Harvard Law School)
 - The International Human Rights and Conflict Resolution Clinic (Stanford Law School)
- Participating Clinics:
- The Civil Rights Clinic (Charlotte School of Law)
 - The Community Justice section of Loyola Law Clinic (New Orleans)
 - The Constitutional Litigation Clinic (Rutgers School of Law-Newark)

Lead Report Authors:

- Sarah Knuckey, Adjunct Professor of Clinical Law and Research Director, Center for Human Rights and Global Justice (CHRGJ), New York University School of Law
- Katherine Glenn, Adjunct Professor of Law, Fordham Law School
- Emi MacLean, Human Rights Lawyer